TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 14.—Original.

THE STATE OF MISSISSIPPI, COMPLAINANT,

vs.

EDWIN M. STANTON, ULYSSES S. GRANT, AND E. O. C. ORD.

FILED APRIL 18, 1867.

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THE STATE OF MISSISSIPPI, COMPLAINANT,

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EDWIN M. STANTON, ULYSSES S. GRANT, AND E. O. C. ORD.

THE STATE OF MISSISSIPPI, complainant,
vs.
EDWIN M. STANTON, ULYSSES S. GRANT, and E. O. C. Ord, defendants.
} In equity.

[L. S.] The President of the United States to Edwin M. Stanton, Ulysses S. Grant, and E. O. C. Ord, greeting:

For certain causes offered before the Supreme Court of the United States, holding jurisdiction in equity, you are hereby commanded that, laying all other matters aside, and notwithstanding any excuse, you be and appear before the said Supreme Court, holding jurisdiction in equity, on the first Monday in December next, at the city of Washington, in the District of Columbia, being the present seat of the national government of the United States, to answer unto the bill of complaint of the State of Mississippi in the said court exhibited against you. Hereof you are not to fail at your peril.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, at the city of Washington, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninety-first.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Issued 20 April, 1867.

Bill.

1 To the Supreme Court of the United States:

The bill of complaint of the State of Mississippi against E. M. Stanton, a citizen of the State of Ohio, Secretary of War of the United States, General U. S. Grant, a citizen of the State of Illinois, general-in-chief of the armies of the United States, both now residents of the District of Columbia, and being the chief officers of

the military authorities of the United States; and also against General E. O. C. Ord, a citizen of the State of Maryland, as complainant has been informed and believes, who has been appointed by the President of the United States as hereinafter stated.

Humbly complaining, the said State of Mississippi would respectfully show to this honorable court, that her territory was composed of a portion of the territory or domain formerly comprised within the limits of the State of Georgia, and by an irrevocable compact between that State and the United States, was ceded to the United States on the 24th of April, 1802; that said compact was made on certain conditions which were unalterable, among which was the provision that said Territory should become and forever remain a State of the American Union, "on the same footing as the original States in all respects whatsoever." Another of these provisions extended to said Territory and to said new States when admitted, all

2 the terms of the ordinance of 13th July, 1789, except as to slavery; that said ordinance was based upon and ratified as a compact with the State of Virginia, by which certain States were to be admitted and forever remain States of the American Union, "on an equal footing with the original States in all respects whatsoever." By said compact of 1802, all these terms and conditions, as well of the compact of 1802, as of said ordinance of 1787, (which were unalterable,) were declared to be "binding and conclusive on the United States." This ordinance of 1787, thus made a part of the compact of 1802, contained the provisions that "the inhabitants of said Territory shall always be entitled to the benefits of the writ of habeas corpus and of a trial by jury." "No man shall be deprived of his liberty or property but by the judgment of his peers and the law of the land." The said Territory and the States which may be formed therein shall forever remain a part of this confederacy. And this was the compact between the United States and Mississippi. Has it been kept?

By act of Congress of 1st of March, 1817, passed in pursuance of said compact of 1802, and ordinance of 1787, authority was given to the people of the western part of the Mississippi Territory "to form a constitution and State government, and for the admission of such State into the Union upon the same footing with the original States in all respects whatsoever."

By this act the constitution of the proposed State was required to conform

3 to said compact of 1802, and said ordinance of 1787, (except as aforesaid,) and the said provisions were made to be "irrevocable" "without the consent of the United States." In pursuance of these acts, ordinances, and compacts, the people of said Territory of Mississippi, on the 15th of August, 1817, adopted a State constitution, with an ordinance thereto attached, and made a part thereof, and declared to be "irrevocable without the consent of the United States." On the 10th of December, 1817, Congress, by a joint resolution, admitted said State into the Union, upon the terms and conditions before stated, and especially reaffirming the ordinance of 1787 in its application to said State. That ordinance, as

we have before seen, provided for the admission of States which were forever to remain States of the American Union, and was made "fundamental" and "unalterable." It was thus, besides the general provisions of the federal Constitution, that Mississippi became a State of the Union, under compacts with Georgia, Virginia, and said State of Mississippi, all of which were "irrevocable" and "unalterable," either by said State or by the United States. It is respectfully submitted that, (independent of these special compacts,) by the provisions of the federal Constitution, the State of Misissippi could, by no act of hers, withdraw from the Union, nor could she be excluded therefrom by Congress, and that all acts of said State, or of Congress, being contrary to the federal Constitution, which is
4 "the supreme law of the land," are null and void, and in a proper case, we believe, will be so declared by this court. In this case, however, besides the protection of the constitutional rights of a State, here are compacts "fundamental," "irrevocable," and "unalterable," securing forever to the State of Mississippi her rights as a State of this Union. Such compacts, and the rights acquired under them, we believe this court will regard it as its duty to maintain and protect in the same manner at least as it would enforce between individuals, by injunction or otherwise, the specific performance of contracts.

The said State of Mississippi avers and charges that having been admitted as a State of the Union in 1817, she has ever since continued to be so, and is so now. That she has a State constitution, republican in form, and a State government, in complete and successful operation, under her constitution, with all its departments filled and administered by proper functionaries, in as proper and full a manner as any State in the Union, and hence she is entitled, by the Constitution of the United States, and by the covenants and compacts aforesaid, to be regarded as a State of the Union in all respects. She acknowledges and claims that the Constitution of the United States is the supreme law of the land, and when her constitutional rights, or the covenant with Georgia are invaded, or with Virginia,
5 under the ordinance of 1787, she has a right to appeal to this honorable tribunal, established as it is by the Constitution to decide, in the last resort, in all cases in which a State is a party, and to give appropriate and adequate relief, especially when, as in this case, there is otherwise no remedy to prevent her utter annihilation; and if there be no remedy here, then her condition is without redress, and her most sacred rights may be invaded and her very existence destroyed.

The said State further shows and charges that having become a member of the Union as aforesaid in 1817, she surrendered certain rights to the United States, in consideration of perpetual protection under the Constitution with all her rights and privileges as a State perpetually guaranteed, and that forever after it was impossible for her people, or for the State, in its corporate capacity, to dissolve that connection with the other States, and any attempt to do so, by secession or otherwise, was a nullity; which she has admitted by engrafting

in an amended constitution a solemn declaration that the pretended ordinance of secession, adopted by a portion of her people, was absolutely null and void, and she now most solemnly asserts that her connection with the federal government was not in anywise thereby destroyed or impaired. And she morover avers and charges
6 that the Congress of the United States cannot constitutionally expel her from the Union, and that any attempt which practically does so is a nullity. And she also charges and avers that there is no provision in the Constitution of the United States which subjects her as a State to any pains, penalties, or forfeitures as a consequence of such void attempt of a portion of her people to withdraw her from the Union, all powers to punish a State by expulsion or otherwise, for any cause, having been expressly refused in the convention which framed the federal Constitution. She avers that her citizens lost none of their political rights, nor incurred any penalties, except what might be inflicted on them as individuals by due process of law, after trial by jury in courts having jurisdiction of their offences, and that disabilities attempted to be imposed upon her, or upon her citizens, otherwise than as aforesaid, by any body of persons, are void, and violations of the Constitution of the United States, as well as of the compact with Georgia of 1802, and with Virginia of 1787.

The said State admits that by the wrongful acts of part of her citizens, and the neglect of the federal authorities to protect the loyal, her government became temporarily disorganized in reference to its relations with the federal government, but she claims
7 that this evil has been corrected in the proper manner by the people of the State.

In concurrence with the views of the President of the United States and the apparent sanction of the public sentiment of the whole country, the people of the State assembled in convention and established for themselves a government, republican in form, and so in practice; and she has been recognized as a State by various acts of Congress, by the official proclamation of the President, and, as she believes, by this court. Even if any of these acts were irregular, which is not admitted, still, when the people of Mississippi did so assemble, it was an assemblage of the highest power of the State, and above the control of the President or Congress, so far as their State constitution was concerned, and neither could impart power to the people, or do more than aid them, since it is a fundamental principle "that governments are instituted among men, deriving their powers from the consent of the governed." The people assembled voluntarily and not by compulsion of the President. A copy of the original and amended constitution is herewith presented.

The said State further avers that she has exhibited her good faith and adhesion to the Constitution of the United States, by electing senators and representatives to Congress, as of right and duty she was bound to do; but her senators and representatives have been and are wrongfully excluded from their right to participate
8 in the legislative department of the government, and her people have been compelled to pay the taxes and bear the

burdens of the government without representation. And the complainant charges, that after the exclusion of her senators and representatives, and after the exclusion of the senators and representatives of nine other States, all or most of whom applied for admission, but were rejected, the representatives of twenty-six States have assembled at the seat of the federal government, and, legislating as the Congress of the United States, have passed an act which is now the special object of complaint, entitled 'An act to provide for the more efficient government of the rebel States," which is hereto annexed as Exhibit A; and an act entitled "An act supplementary to an act entitled 'an act to provide for the more efficient government of the rebel States,' " hereto annexed as Exhibit B, and both prayed to be taken as a part of this bill. The title of these bills admits that they are States, and yet power is assumed to establish governments for them; and this assumption is founded on the pretext set out in the preamble. that no legal State governments exist in the said State of Mississippi, and other southern States, adequate to the protection of life or property, which is believed to be wholly erroneous; since the people of Mississippi, the only source from which State governments can emanate, have, as before stated, formed for themselves a government fully adequate to the protection of life, liberty, and property.

9 This act and the act supplementary thereto utterly annihilate the State and its government, by assuming for Congress the power to control, modify, and even abolish its government, in short to exert sovereign power over it, and the utter destruction of the State must be the consequence of their execution; they also violate a well known salutary principle in governments, the observance of which can alone preserve them, by making the civil power subordinate to the military power, and thus establish a military rule over the States enumerated in the act, and make a precedent by which the government of the United States may be converted into a military despotism, in which every man may be deprived of his goods, lands, liberty, and life by the breath of a military commander, or the sentence of the military commission or tribunal, without the benefit of trial by jury, and without the observance of any of those requirements and guarantees by which the Constitution and laws so plainly protect and guard the rights of the citizen and; the more effectually to accomplish this purpose, said acts divide the ten southern States into five military districts, and make it the duty of the President to assign an officer to the command of each district, and to place a sufficient force under him, whose will is to be the law,

10 and his soldiers the power that executes it. It is declared to be his duty to protect all persons in their rights of person and property; to suppress insurrections, disorder, and violence, and to punish or cause to be punished all disturbers of the public peace and criminals; and he may organize military commissions and tribunals to try offenders when he may think proper. But by what rule or law is he to judge of the rights of persons or property? by what rule or law is he to arrest, try, and punish criminals? by what rule or law

is he to judge whether they have committed crimes? The answer to these questions is plain—by his own will, for, though he may adopt the State authorities as his instruments, if he will, yet he may reject them if he will. A scope of power so broad, so comprehensive, was never before vested in a military commander in any government which guards the rights of its citizens or subjects by law; it embraces necessarily all those subjects over which the States reserved the power to legislate for themselves, as essential to their existence as States, including the domestic relations, all the rights of property, real and personal, the rights of personal security and personal liberty, and assumes the right to control the whole of the domestic concerns of the State. These acts also provide that the governments now existing in the southern States are but provisional governments, subject to the paramount authority of Con-
11 gress, which may at any time abolish, [modify, control, or supersede them. These acts were vetoed by the President, but were passed over the vetoes by two-thirds of both houses as now organized, ten States being excluded from representation by both houses of Congress.

Now complainant expressly charges that, from the most undoubted information and belief, indeed from official announcements, the President of the United States, by the advice and with the approbation and orders of the said E. M. Stanton and General U. S. Grant, and as required by said original and supplemental acts, has assigned military commanders to each of said five districts, and has assigned the said General E. O. C. Ord to the command of the fourth district to which Mississippi and Arkansas belong. And the complainant avers that the said General E. O. C. Ord has been ordered by the President to repair to the place designated as his headquarters, and has complied with this instruction; and, if he has not already done so, will very soon proceed to execute, in all particulars, the acts which are the subject of complaint. And complainant avers that by the execution of these unconstitutional measures, all the injuries and evils complained in this her bill of complaint will speedily be brought upon her, unless she can have relief by the restraining powers of this honorable court.

Now, complainant expressly charges and avers that the said
12 acts are in violation of the Constitution of the United States—that their execution will deprive her of her rights under the Constitution, and for this reason she asks the interposition of this court to protect the Constitution. They will violate the solemn compact with Georgia and Virginia, and to protect these compacts the interposition of this court is respectfully invoked. And if these acts be carried into effect, as it is supposed and charged they will be, speedy and irreparable mischief, not only to the State, but to her citizens, must be the inevitable consequence, in this, the State will be deprived of every attribute of State authority, and practically annihilated her as a State, and convert into a subordinate dependency for an indefinite period. The whole system of internal domestic affairs, over which the State authorities alone can have cognizance, will be broken

up; legislation annulled; the judicial system of the State subverted, inasmuch as they declare the present State governments illegal. The titles to property and the contracts of individuals made under existing laws, must become entirely uncertain and unsettled, and constitute the source of endless litigation hereafter. They must open the door to the perpetration of innumerable personal wrongs. They will deprive the people of the writ of habeas corpus; their exemption from arrest except on warrant founded on affidavit, the safeguard of a grand jury, and their right of trial by jury, and establish despotic military power on the ruins of their constitution. They will produce mischiefs that may not be corrected for years, perhaps never; and they can only be prevented by the process of this court. And these
13 acts establish a precedent by Congress composed of a majority of States, may at pleasure exclude any State, or any number of States, from the American Union.

And complainant would further show that many legal questions must arise under these bills if the government contemplated by them be carried out, which, sooner or later, must come before this court for final adjudication; and it is believed these bills will ultimately be decided unconstitutional in their whole length and breadth. As a consequence, all acts that may have been done under them must be declared void, even to the constitutions which may be formed under them. The mischiefs that must result from such a state of things are incalculable: Suits without number, not only in regard to rights of property, but for punishments inflicted without authority; a total disorganization of the present government, inasmuch as no elections can be held to fill the State offices. A state of anarchy must intervene until government can be again reorganized by the people. Therefore public policy, the good order of society, the safety of a people, call loudly for speedy redress.

And complainant also charges that this bill is filed as a bill of peace, and to prevent the endless suits and controversies, in-
14 asmuch as the execution of the acts must produce such an endless variety of litigation as to disturb the good order of society by driving aggrieved parties to seek redress against officers and others who may commit trespasses and crimes against the innocent. To prevent such evils is one of the common grounds of equity jurisdiction.

And complainant avers that this appeal is made to this honorable court in good faith, and not from factious motives, or from a spirit of insubordination to law, but under a fixed belief that these acts are in violation of the Constitution and of the compacts aforesaid, and impose no obligation on her people to observe them unless declared to be valid by this honorable court; and therefore claims, as she has a right to do, the deliberate determination of this court as the tribunal organized under the Constitution to preserve it inviolate, and to keep all the departments of the government within their appropriate spheres by trying their acts by the test of the
15 Constitution; and she claims the exercise of this undoubted right in advance, for the purpose of preventing irreparable

mischiefs so gigantic and intolerable as those which are threatened. If she should be mistaken in this, and the acts should be decided to be constitutional, she will most cheerfully yield implicit obedience to all their behests, whatever the consequences may be. All she desires is to guard her rights and the rights of her citizens, and this boon she hopes may be accorded her before it is too late, and without being subjected to the imputation of improper motives. If either the State or the people have constitutional rights, it is a paramount duty to preserve them by all legitimate means. This court the State believes to be the great tribunal for the peaceful settlement of all constitutional questions, and especially "all cases in which a State is a party," as expressly provided in the fundamental law.

In consideration of the premises, and inasmuch as complainant manifestly has no remedy whatever at law, as must be apparent to the court, and can have redress, as a State, only through this court, as provided by the Constitution, complainant appeals to the preventive power of this honorable court, exercising the jurisdiction
16 of a court of equity, and humbly prays that the said E. M. Stanton, General U. S. Grant, and General E. O. C. Ord, the defendants above named, and all their subordinate agents, be perpetually enjoined and restrained from executing or in any manner carrying out the said act to provide for a more efficient government of the rebel States, and the act supplementary thereto, and that process of injunction and subpœna issue, directed to the parties aforesaid, or to such of them as the court deem right and proper to be served with process, and that they be required to answer this bill of complaint. And if complainant should be mistaken in the relief sought, then that such other and further relief may be granted as may be deemed right and proper in the premises. And complainant, as in duty bound, will ever pray.

W. L. SHARKEY,
R. J. WALKER, and
A. H. GARLAND,
Counsel for Comp.

17 DISTRICT OF COLUMBIA, *County of Washington:*

Personally appeared before me, Nicholas Callan, a notary public of the county aforesaid, William L. Sharkey, a senator elect from the State of Mississippi, who, being duly sworn, says that the facts stated in this bill are true, and matters of opinion or reference he believes to be true.

Witness my hand and official seal, this day of April, 1867.
[SEAL.]
N. CALLAN,
Notary Public.

Filed 18 April, 1867.

17¼ An act to provide for the more efficient government of the rebel States.

Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said rebel States shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed, and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama, and Florida, the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.

SEC. 2. *And be it further enacted*, That it shall be the duty of the President to assign to the command of each of said districts an officer of the army, not below the rank of brigadier general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.

SEC. 3. *And be it further enacted*, That it shall be the duty of each officer assigned as aforesaid to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals, and to this end he may allow local civil tribunals to take jurisdiction of and to try offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference under color of State authority with the exercise of military authority under this act shall be null and void.

SEC. 4. *And be it further enacted*, That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted, and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except in so far as they conflict with its provisions: *Provided*, That no sentence of death under the provisions of this act shall be carried into effect without the approval of the President.

SEC. 5. *And be it further enacted*, That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion or for felony at common law, and when such constitution shall provide that the

elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates, and when such Constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such Constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said Constitution, shall have adopted the amendment to the Constitution of the United States proposed by the thirty-ninth Congress and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: *Provided*, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.

SEC. 6. *And be it further enacted*, That until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil government which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote under the provisions of the fifth section of this act; and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third article of said constitutional amendment.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LA FAYETTE S. FOSTER,
President of the Senate pro tempore.

17½ An act supplementary to an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, and to facilitate restoration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That before the first day of September, eighteen hundred and sixty-seven, the commanding general in each district defined by an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, shall cause a registration to be made of the male citizens of the United States, twenty-one years of age and upwards, resident in each county or parish in the State or States included in his district, which registration shall include only those

persons who are qualified to vote for delegates by the act aforesaid, and who shall have taken and subscribed the following oath or affirmation: "I ———, do solemnly swear, (or affirm,) in the presence of Almighty God, that I am a citizen of the State of ———; that I have resided in said State for ——— months next preceding this day, and now reside in the county of ———, or the parish of ———, in said State, (as the case may be;) that I am twenty-one years old; that I have not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony committed against the laws of any State or of the United States; that I have never been a member of any State legislature, nor held any executive or judicial office in any State and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do, so help me God;" which oath or affirmation may be administered by any registering officer.

SEC. 2. *And be it further enacted*, That after the completion of the registration hereby provided for in any State, at such time and places therein as the commanding general shall appoint and direct, of which at least thirty days' public notice shall be given, an election shall be held of delegates to a convention for the purpose of establishing a constitution and civil government for such State loyal to the Union, said convention in each State, except Virginia, to consist of the same number of members as the most numerous branch of the State legislature of such State in the year eighteen hundred and sixty, to be apportioned among the several districts, counties, or parishes of such State by the commanding general, giving to each representation in the ratio of voters registered as aforesaid, as nearly as may be. The convention in Virginia shall consist of the same number of members as represented the territory now constituting Virginia in the most numerous branch of the legislature of said State in the year eighteen hundred and sixty, to be apportioned as aforesaid.

SEC. 3. *And be it further enacted*, That at said election the registered voters of each State shall vote for or against a convention to form a constitution therefor under this act. Those voting in favor of such a convention shall have written or printed on the ballots by which they vote for delegates as aforesaid, the words "For a convention," and those voting against such a convention shall have written or printed on such ballots the words "Against a convention." The persons appointed to superintend said election, and to make return of the votes given thereat, as herein provided, shall count and make return of the votes given for and against a convention; and the commanding general to whom the same shall have been returned shall

ascertain and declare the total vote in each State for and against a convention. If a majority of the votes given on that question shall be for a convention, then such convention shall be held as hereinafter provided; but if a majority of said votes shall be against a convention, then no such convention shall be held under this act: *Provided*, That such convention shall not be held unless a majority of all such registered voters shall have voted on the question of holding such a convention.

SEC. 4. *And be it further enacted*, That the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, list of voters, and of the persons elected as delegates by a plurality of the votes cast at said election; and upon receiving said returns he shall open the same, ascertain the persons elected as delegates, according to the returns of the officers who conducted said election, and make proclamation thereof; and if a majority of the votes given on that question shall be for a convention, the commanding general, within sixty days from the date of election, shall notify the delegates to assemble in convention, at a time and place to be mentioned in the notification, and said convention, when organized, shall proceed to frame a constitution and civil government according to the provisions of this act, and the act to which it is supplementary; and when the same shall have been so framed, said constitution shall be submitted by the convention for ratification to the persons registered under the provisions of this act at an election to be conducted by the officers or persons appointed or to be appointed by the commanding general, as hereinbefore provided, and to be held after the expiration of thirty days from the date of notice thereof, to be given by said convention; and the returns thereof shall be made to the commanding general of the district.

17¾ SEC. 5. *And be it further enacted*, That if, according to said returns, the constitution shall be ratified by a majority of the votes of the registered electors qualified as herein specified, cast at said election, at least one-half of all the registered voters voting upon the question of such ratification, the president of the convention shall transmit a copy of the same, duly certified, to the President of the United States, who shall forthwith transmit the same to Congress, if then in session, and if not in session, then immediately upon its next assembling; and if it shall moreover appear to Congress that the election was one at which all the registered and qualified electors in the State had an opportunity to vote freely and without restraint, fear, or the influence of fraud, and if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the State, and if the said constitution shall be declared by Congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the State shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided.

SEC. 6. *And be it further enacted*, That all elections in the States mentioned in the said "Act to provide for the more efficient government of the rebel States," shall, during the operation of said act, be by ballot; and all officers making the said registration of voters and conducting said elections shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed by the act approved July second, eighteen hundred and sixty-two, entitled "An act to prescribe an oath of office:" *Provided*, That if any person shall knowingly and falsely take and subscribe any oath in this act prescribed, such person so offending and being thereof duly convicted, shall be subject to the pains, penalties, and disabilities which by law are provided for the punishment of the crime of wilful and corrupt perjury.

SEC. 7. *And be it further enacted*, That all expenses incurred by the several commanding generals, or by virtue of any orders issued, or appointments made by them, under or by virtue of this act, shall be paid out of any moneys in the treasury not otherwise appropriated.

SEC. 8. *And be it further enacted*, That the convention for each State shall prescribe the fees, salary, and compensation to be paid to all delegates and other officers and agents herein authorized or necessary to carry into effect the purposes of this act not herein otherwise provided for, and shall provide for the levy and collection of such taxes on the property in such State as may be necessary to pay the same.

SEC. 9. *And be it further enacted*, That the word "article," in the sixth section of the act to which this is supplementary, shall be construed to mean "section."

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LA FAYETTE S. FOSTER,
President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U. S.,
March 23*d*, 1867.

The President of the United States having returned to the House of Representatives, in which it originated, the bill entitled "An act supplementary to an act entitled 'An act to provide for the more efficient government of the rebel States,' passed March second, eighteen hundred and sixty-seven, and to facilitate restoration," with his objections thereto, the House of Representatives proceeded, in pursuance of the Constitution, to reconsider the same; and

Resolved, That the said bill do pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest: EDWD. McPHERSON,
Clerk H. R. U. S.

IN SENATE OF THE UNITED STATES,
March 23, 1867.

The Senate having proceeded, in pursuance of the Constitution, to reconsider the bill entitled "An act supplementary to an entitled 'An act to provide for the more efficient government of the rebel States,' passed March second, eighteen hundred and sixty-seven, and to facilitate restoration," returned to the House of Representatives by the President of the United States, with his objections, and sent by the House of Representatives to the Senate, with the message of the President returning the bill;

Resolved, That the bill do pass, two-thirds of the Senate agreeing to pass the same.

Attest: J. W. FORNEY,
Secretary.

18 *Constitution of the State of Mississippi, adopted October 26th, 1832, and as amended by the convention held in August, 1865, together with all the amendments made prior to that date and left in force by said convention.*

ARTICLE I.—DECLARATION OF RIGHTS.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare:

SECTION 1. That all free men, when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive, separate public emoluments or privileges from the community but in consideration of public services.

SECTION 2. That all political power is inherent in the people, and all free governments are founded on their authority and established for their benefit; and therefore they have, at all times, an inalienable and indefeasible right to alter or abolish their form of government in such manner as they may think expedient.

SECTION 3. The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all
19 persons in this State: *Provided*, That the right hereby declared and established shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State.

SECTION 4. No preference shall ever be given, by law, to any religious sect or mode of worship.

SECTION 5. That no person shall be molested for his opinions on any subject whatever, nor suffer any civil or political incapacity, or acquire any civil or political advantage in consequence of such opinions, except in cases provided for in this constitution.

SECTION 6. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

SECTION 7. No law shall ever be passed to curtail or restrain the liberty of speech, or of the press.

SECTION 8. In all prosecutions or indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the facts.

SECTION 9. That the people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and that no warrant to search any place or to seize any person or thing, shall issue without describing the place to be searched, and the person or thing to be seized, as nearly as may be, nor without probable cause supported by oath or affirmation.

SECTION 10. That in all criminal prosecutions the accused hath a right to be heard by himself or counsel, or both; to demand the nature and cause of the accusation; to be confronted by the
20 witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and in all prosecutions by indictment or information, a speedy and public trial by an impartial jury of the county where the offence was committed, that he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property but by due course of law.

SECTION 11. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the form which the same has prescribed; and no person shall be punished but in virtue of a law established and promulgated prior to the offence, and legally applied.

SECTION 12. That no person shall, for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia when in actual service, or by leave of the court for misdemeanor in office: *Provided*, That the legislature, in cases of petit larceny, assault, assault and battery, affray, riot, unlawful assembly, drunkenness, vagrancy, and other misdemeanors of like character, may dispense with an inquest of a grand jury, and may authorize prosecutions before justices of the peace, or such other inferior court or courts as may be established by the legislature; and the proceedings in such cases shall be regulated by law.

SECTION 13. No person shall, for the same offence, be twice put in jeopardy of life or limb; nor shall any person's property be taken or applied to public use without the consent of the legislature, and without just compensation being first made therefor.

SECTION 14. That all courts shall be opened, and every person, for an injury done him in his lands, goods, person, or reputation,
21 shall have remedy by due course of law, and right and justice administered, without sale, denial, or delay.

SECTION 15. That no power of suspending laws shall be exercised except by the legislature or its authority.

SECTION 16. That excessive bail shall not be required; nor excessive fines imposed; nor cruel punishments inflicted.

SECTION 17. That all prisoners shall, before conviction, be bailable by sufficient securities, except for capital offences, where the proof

is evident, or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless, when in case of rebellion or invasion, the public safety may require it.

SECTION 18. That the person of a debtor, when there is not strong presumption of fraud, shall not be detained in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

SECTION 19. No conviction, for any offence, shall work corruption of blood or forfeiture of estate. The legislature shall pass no bill of attainder, ex post facto law, nor law impairing the obligation of contracts.

SECTION 20. No property qualification for eligibility to affice, or for the right of suffrage, shall ever be required by law in this State.

SECTION 21. That the estates of suicides shall descend or vest as in cases of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SECTION 22. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those vested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

22 SECTION 23. Every citizen has a right to bear arms in defence of himself and of the State.

SECTION 24. No standing army shall be kept up, without the consent of the legislature; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

SECTION 25. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner; or, in time of war, but in a manner to be prescribed by law.

SECTION 26. That no hereditary emoluments, privileges, or honors, shall ever be granted or conferred in this State.

SECTION 27. Emigration from this State shall not be prohibited; nor shall any free white citizen of this State ever be exiled, under any pretence whatever.

SECTION 28. The right of trial by jury shall remain inviolate.

SECTION 29. No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in this State, by him or herself, or counsel, or both.

SECTION 30. No person shall ever be appointed or elected to any office in this State for life, or during good behavior; but the tenure of all offices shall be for some limited period of time, if the person appointed or elected thereto shall so long behave well.

CONCLUSION.

To guard against transgressions of the high powers herein delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void.

23 ARTICLE II.—DISTRIBUTION OF POWERS.

SEC. 1. The powers of the government of the State of Mississippi shall be divided into three distinct departments, and each of them confided to a separate body of magistracy, to wit, those which are legislative to one, those which are judicial to another, and those which are executive to another.

SEC. 2. No person, or collection of persons, being of one of these departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE III.—LEGISLATIVE DEPARTMENT.

SEC. 1. Every free white male person of the age of twenty-one years or upwards, who shall be a citizen of the United States, and shall have resided in this State one year next preceding an election, and the last four months, within the county, city, or town in which he offers to vote, shall be deemed a qualified elector. And any such qualified elector who may happen to be in any county, city, or town other than that of his residence at the time of an election, or who shall have removed to any county, city, or town within four months preceding the election, from any county, city, or town in which he would have been a qualified elector had he not so removed, may vote for any State or district officer or member of Congress for whom he could have voted in the county of his residence, or the county, city, or town from which he may have so removed.

SEC. 2. Electors shall, in all cases, except in those of treason, felony, or breach of the peace, be privileged from arrest, during their attendance on elections, and in going to and returning from the same.

24 SEC. 3. The first election shall be by ballot, and all future elections by the people shall be regulated by law.

SEC. 4. The legislative power of the State shall be vested in two distinct branches; the one to be styled "the senate," the other "the house of representatives;" and both together "the legislature of the State of Mississippi." And the style of their laws shall be, "*Be it enacted by the Legislature of the State of Mississippi.*"

SEC. 5. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of two years, from the day of the commencement of the general election, and no longer.

SEC. 6. The representatives shall be chosen every two years, on the first Monday and day following in November.

SEC. 7. No person shall be a representative unless he be a citizen of the United States, and shall have been an inhabitant of this State two years next preceding his election, and the last year thereof a resident of the county, city, or town for which he shall be chosen, and shall have attained the age of twenty-one years.

SEC. 8. Elections for representatives for the several counties shall

be held at the places of holding their respective courts, or in the several election districts into which the county may be divided: *Provided*, That when it shall appear to the legislature that any city or town hath a number of free white inhabitants equal to the ratio then fixed, such city or town shall have a separate representation, according to the number of free white inhabitants therein, which shall be retained so long as such city or town shall contain a number of free white inhabitants equal to the existing ratio; and thereafter, and during the existence of the right of separate representation in such city or town, elections for the county in which such city or town entitled to a separate representation is situated, shall not be held in such city or town: *And provided*, That, if the residuum or fraction of any city or town entitled to separate representation shall, when added to the residuum in the county in which it may lie, be equal to the ratio fixed by law for one representative, then the aforesaid county, city, or town having the largest residuum shall be entitled to such representation: *And provided also*, That when there are two or more counties adjoining, which have residuums over and above the ratio then fixed by law, if such residuums, when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

SEC. 9. The legislature shall, at their first session, and at periods of not less than every four, nor more than every six years, until the year 1845, and thereafter at periods of not less than every four, and not more than every eight years, cause an enumeration to be made of all the free white inhabitants of this State; and the whole number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the several counties, cities, or towns entitled to separate representation, according to the number of free white inhabitants in each; and shall not be less than thirty-six, nor more than one hundred: *Provided, however*, That each county shall always be entitled to at least one representative.

SEC. 10. The whole number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the legislature, and apportioned among the several districts to be established by law, according to the number of free white inhabitants in each, and shall never be less than one-fourth, nor more than one-third, of the whole number of representatives.

SEC. 11. The senators shall be chosen by the qualified electors for four years; and on their being convened in consequence of the first election, they shall be divided by lot from their respective districts into two classes, as nearly equal as can be. And the seats of the senators of the first class shall be vacated at the expiration of the second year.

SEC. 12. Such mode of classifying new additional senators shall be observed as will, as nearly as possible, preserve an equality of numbers in each class.

SEC. 13. When a senatorial district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a district.

SEC. 14. No person shall be a senator unless he be a citizen of the United States, and shall have been an inhabitant of this State for four years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and have attained the age of thirty years.

SEC. 15. The house of representatives, when assembled, shall choose a speaker and its other officers; and the senate shall choose a president and its officers, and each house shall judge of the qualifications and elections of its own members; but a contested election shall be determined in such manner as shall be directed by law. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may provide.

SEC. 16. Each house may determine the rules of its own proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member, but not a second time for the
27 same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent State.

SEC. 17. Each house shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the journal.

SEC. 18 When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election to fill such vacancies.

SEC. 19. Senators and representatives shall, in all cases, except of treason, felony, or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened.

SEC. 20. Each house may punish, by imprisonment during the session, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings: *Provided*, Such imprisonment shall not, at any one time, exceed forty-eight hours.

SEC. 21. The doors of each house shall be opened, except on such occasions of great emergency as, in the opinion of the house, may require secresy.

SEC. 22. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 23. Bills may originate in either house, and be amended, altered, or rejected, by the other; but no bill shall have the force of a law, until, on three several days, it be read in each house, and free discussion be allowed thereon, unless four-fifths of the house
28 in which the bill shall be pending, may deem it expedient to dispense with this rule; and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

SEC. 24. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

SEC. 25. Each member of the legislature shall receive from the public treasury a compensation for his services, which may be increased or diminished by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

SEC. 26. No senator or representative shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people; and no member of either house of the legislature shall, after the commencement of the first session of the legislature after his election and during the remainder of the term for which he is elected, be eligible to any office or place the appointment of which may be made, in whole or in part, by either branch of the legislature.

SEC. 27. No judge of any court of law or equity, secretary of state, attorney general, clerk of any court of record, sheriff, or collector, or any person holding a lucrative office under the United States, or this State, shall be eligible to the legislature: *Provided*, That offices in the militia to which there is attached no annual salary, and the office of justice of the peace shall not be deemed lucrative.

SEC. 28. No person who hath heretofore been, or hereafter
29 may be, a collector or holder of public moneys shall have a seat in either house of the legislature until such person shall have accounted for and paid into the treasury all sums for which he may be accountable.

SEC. 29. The first election for senators and representatives shall be general throughout the State, and shall be held on the first Monday and day following, in November, 1833; and thereafter there shall be biennial elections for senators to fill the places of those whose term of service may have expired.

SEC. 30. The first, and all future sessions of the legislature, shall be held in the town of Jackson, in the county of Hinds, until the year 1850. During the first session thereafter the legislature shall have power to designate by law the permanent seat of government: *Provided, however*, That unless such designation be then made by law, the seat of government shall continue permanently at the town of Jackson. The first session shall commence on the first Monday in November, in the year 1833, and in every two years thereafter, at such time as may be prescribed by law.

SEC. 31. The governor, secretary of state, treasurer, auditor of public accounts, and attorney general shall reside at the seat of government.

ARTICLE IV.—JUDICIAL DEPARTMENT.

SEC. 1. The judicial power of this State shall be vested in one high court of errors and appeals, and such other courts of law and equity as are hereafter provided for in this constitution.

SEC. 2. The high court of errors and appeals shall consist of three judges, any two of whom shall form a quorum. The legislature shall divide the State into three districts, and the qualified electors of each district shall elect one of said judges for the term of six years.

SEC. 3. The office of one of said judges shall be vacated in two years, of one in four years, and of one in six years; so that at the expiration of every two years one of said judges shall be elected as aforesaid.

SEC. 4. The high court of errors and appeals shall have no jurisdiction but such as properly belongs to a court of errors and appeals.

SEC. 5. All vacancies that may occur in said courts from death, resignation, or removal, shall be filled by election as aforesaid: *Provided, however*, That if the unexpired term do not exceed one year, the vacancy shall be filled by executive appointment.

SEC. 6. No person shall be eligible to the office of judge of the high court of errors and appeals who shall not have attained, at the time of his election, the age of thirty years.

SEC. 7. The high court of errors and appeals shall be held at least once in each year at the seat of government, and at such other place or places in the State as the legislature may direct.

SEC. 8. The secretary of state, on receiving all the official returns of the first election, shall proceed, forthwith, in the presence and with the assistance of two justices of the peace, to determine by lot among the three candidates having the highest number of votes which of said judges elect shall serve for the term of two years, which shall serve for the term of four years, and which shall serve for the term of six years; and having so determined the same, it shall be the duty of the governor to issue commissions accordingly.

SEC. 9. No judge shall sit on the trial of any cause when the parties or either of them shall be connected with him by affinity or consanguinity, or when he may interested in the same, except by consent of the judge and of the parties; and whenever a quorum of said court are situated as aforesaid, the governor of the State shall, in such cases, specially commission two or more men of law knowledge for the determination thereof.

SEC. 10. The judges of said court shall receive for their services a compensation to be fixed by law, which shall not be diminished during their continuance in office.

SEC. 11. The judges of the circuit court shall be elected by the qualified electors of each judicial district, and hold their offices for the term of four years, and reside in their respective districts.

SEC. 12. No person shall be eligible to the office of judge of the circuit court who shall not at the time of his election have attained the age of twenty-six years.

SEC. 13. The State shall be divided into convenient districts, and each district shall contain not less than three nor more than twelve counties.

SEC. 14. The circuit court shall have original jurisdiction in all matters, civil and criminal, within this State; but in civil cases only when the principal of the sum in controversy exceeds fifty dollars.

SEC. 15. A circuit court shall be held in each county of this State at least twice in each year; and the judges of said courts shall interchange circuits with each other, in such manner as may be prescribed by law, and shall receive for their services a compensation to be fixed by law, which shall not be diminished during their continuance in office.

SEC. 16. A separate superior court of chancery shall be established, with full jurisdiction in all matters of equity: *Provided, however,*
32 The legislature may give to the circuit court of each county equity jurisdiction in all cases where the value of the thing, or amount in controversy, does not exceed five hundred dollars; also, in all cases of divorce, and for the foreclosure of mortgages. The chancellor shall be elected by the qualified electors of the whole State, for the term of six years, and shall be at least thirty years old at the time of his election.

SEC. 17. The style of all process shall be, "The State of Mississippi;" and all prosecutions shall be carried on in the name and by the authority of "The State of Mississippi," and shall conclude, "against the peace and dignity of the same."

SEC. 18. A court of probates shall be established in each county in this State, with jurisdiction in all matters testamentary and of administration, in minor's business and allotment of dower, in cases of idiocy and lunacy, and of persons non compos mentis. The judge of said court shall be elected by the qualified electors of the respective counties for the term of two years.

SEC. 19. The clerk of the high court of errors and appeals shall be appointed by the said court for the term of four years; and the clerks of the probate and other inferior courts shall be elected by the qualified electors of the respective counties, and shall hold their offices for the term of two years.

SEC. 20. The qualified electors of each county shall elect five persons for the term of two years, who shall constitute a board of police for each county, a majority of whom may transact business; which body shall have full jurisdiction over roads, highways, ferries, and bridges, and all other matters of county police; and shall order all county elections to fill vacancies that may occur in the offices
33 of their respective counties. The clerk of the court of probates shall be the clerk of the board of county police.

SEC. 21. No person shall be eligible as a member of said board who shall not have resided one year in the county; but this qualification shall not extend to such new counties as may hereafter be established until one year after organization; and all vacancies that may occur in said board shall be supplied by election as aforesaid to fill the unexpired term.

SEC. 22. The judges of all the courts of this State, and also the members of the board of county police, shall, in virtue of their offices, be conservators of the peace, and shall be by law vested with ample powers in this respect.

SEC. 23. A competent number of justices of the peace and constables shall be chosen in each county by the qualified electors thereof, by districts, who shall hold their offices for the term of two years; the jurisdiction of justices of the peace shall be limited to cases in which the principal of the amount in controversy shall not exceed fifty dollars; in all cases tried by a justice of the peace, the right of appeal shall be secured under such rules and regulations as shall be prescribed by law.

SEC. 24. The legislature may from time to time establish such other inferior courts as may be deemed necessary, and abolish the same whenever they shall deem it expedient.

SEC. 25. There shall be an attorney general elected by the qualified electors of the State; and a competent number of district attorneys shall be elected by the qualified electors of their respective districts; whose compensation and term of service shall be prescribed by law.

SEC. 26. The legislature shall provide by law for determin-
34 ing contested elections of judges of the high court of errors and appeals, of the circuit and probate courts and other officers.

SEC. 27. The judges of the several courts of this State, for wilful neglect of duty or other reasonable cause, shall be removed by the governor, on the address of two-thirds of both houses of the legislature; the address to be by joint vote of both houses. The cause or causes for which such removal shall be required shall be stated at length in such address, and on the journal of each house. The judge so intended to be removed shall be notified and admitted to a hearing in his own defence before any vote for such address shall pass. The vote on such address shall be taken by yeas and nays, and entered on the journal of each house.

SEC. 28. Judges of probate, clerks, sheriffs, and other county officers, for wilful neglect of duty or misdemeanor in office, shall be liable to presentment or indictment by a grand jury, and trial by petit jury, and upon conviction shall be removed from office.

ARTICLE V.—EXECUTIVE DEPARTMENT.

SEC. 1. The chief executive power of this State shall be vested in a governor, who shall hold his office for two years from the time of his installation.

SEC. 2. The governor shall be elected by the qualified electors of the State. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the secretary of state, who shall deliver them to the speaker of the house of representatives, at the next ensuing session of the legislature, during the first week of which session the said speaker shall open and publish them in the presence of both houses of the legislature.
35 The person having the highest number of votes shall be gov-

ernor; but if two or more shall be equal and highest in votes, then one of them shall be chosen governor by the joint ballot of both houses of the legislature. Contested elections for governor shall be determined by both houses of the legislature, in such manner as shall be prescribed by law.

SEC. 3. The governor shall be at least thirty years of age, and shall have been a citizen of the United States for twenty years, shall have resided in this State at least five years next preceding the day of his election, and shall not be capable of holding the office more than four years in any term of six years.

SEC. 4. He shall at stated times receive for his services a compensation, which shall not be increased or diminished during the term for which he shall be elected.

SEC. 5. He shall be commander-in-chief of the army and navy of this State, and of the militia, except when they shall be called into the service of the United States.

SEC. 6. He may require information in writing from the officers in the executive department on any subject relating to the duties of their respective offices.

SEC. 7. He may, in cases of emergency, convene the legislature at the seat of government, or at a different place, if it shall have become, since their last adjournment, dangerous, from an enemy, or from disease; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the day of the next stated meeting of the legislature.

SEC. 8. He shall from time to time give the legislature information of the state of the government, and recommend to their consideration such measures as he may deem necessary and expedient.

36 SEC. 9. He shall take care that the laws be faithfully executed.

SEC. 10. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines, and, in cases of forfeiture, to stay the collection until the end of the next session of the legislature; and to remit forfeitures, by and with the advice and consent of the senate. In cases of treason he shall have power to grant reprieves, by and with the advice and consent of the senate; but may respite the sentence until the end of the next session of the legislature.

SEC. 11. All commissions shall be in the name and by authority of the State of Mississippi, be sealed with the great seal, and signed by the governor, and be attested by the secretary of state.

SEC. 12. There shall be a seal of this State, which shall be kept by the governor, and used by him officially, and shall be called the great seal of the State of Mississippi.

SEC. 13. All vacancies not provided for in this constitution shall be filled in such manner as the legislature may prescribe.

SEC. 14. The secretary of state shall be elected by the qualified electors of the State, and shall continue in office during the term of two years. He shall keep a fair register of all the official acts and

proceedings of the governor, and shall, when required, lay the same and all papers, minutes, and vouchers relative thereto before the legislature, and shall perform such other duties as may be required of him by law.

SEC. 15. Every bill which shall have passed both houses of the legislature shall be presented to the governor. If he approve,
37 he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated, which shall enter the objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of the house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered. If approved by two-thirds of that house, it shall become a law; but in such case the vote of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each house, respectively. If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the legislature by their adjournment prevent its return, in which case it shall not become a law.

SEC. 16. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except resolutions for the purpose of obtaining the joint action of both houses, and on questions of adjournment, shall be presented to the governor; and, before it shall take effect, be approved by him, or, being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the case of a bill.

SEC. 17. Whenever the office of governor shall become vacant, by death, resignation, removal from office, or otherwise, the president of the senate shall exercise the office of governor until another governor shall be duly qualified; and in case of the death, resignation, removal from office, or other disqualification of the president of the senate so exercisiag the office of governor, the speaker of the house of representatives shall exercise the office until the president of the
38 senate shall have been chosen; and when the office of governor, president of the Senate, and speaker of the house shall become vacant in the recess of the senate, the person acting as secretary of state for the time being shall, by proclamation, convene the senate, that a president may be chosen to exercise the office of governor.

SEC. 18. When either the president or speaker of the house of representatives shall so exercise said office, he shall receive the compensation of governor only, and his duties as president or speaker shall be suspended, and the senate, or house of representatives, as the case may be, shall fill the vacancy, until his duties as governor shall cease.

SEC. 19. A sheriff and one or more coroners, a treasurer, surveyor, and ranger, shall be elected in each county, by the qualified electors thereof, who shall hold their offices for two years, unless sooner removed; except that the coroner shall hold his office until his successor be duly qualified.

SEC. 20. A state treasurer and auditor of public accounts shall be elected by the qualified electors of the State, who shall hold their offices for the term of two years, unless sooner removed.

MILITIA.

SEC. 1. The legislature shall provide by law, for organizing and disciplining the militia of this State, in such manner as they deem expedient, not incompatible with the Constitution and laws of the United States in relation thereto.

SEC. 2. Commissioned officers of the militia (staff officers and the officers of volunteer companies excepted) shall be elected by
39 the persons liable to perform military duty, and the qualified electors within their respective commands, and shall be commissioned by the governor.

SEC. 3. The governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrection, and repel invasion.

ARTICLE VI.—IMPEACHMENTS.

SEC. 1. The house of representatives shall have the sole power of impeaching.

SEC. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be on oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 3. The governor, and all civil officers, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted shall nevertheless be liable and subject to indictment, trial, and punishment, according to law, as in other cases.

ARTICLE VII.—GENERAL PROVISIONS.

SEC. 1. Members of the legislature, and all officers, executive and judicial, before they enter upon the duties of their respective offices, shall take the following oath or affirmation, to wit: "I solemnly swear, (or affirm, as the case may be,) that I will support the Constitution of the United States, and the constitution of the State of Mississippi, so long as I continue a citizen thereof; and that I will faithfully discharge to the best of my abilities, the duties of the office of ———, according to law. So help me God."

40 SEC. 2. The legislature shall pass such laws to prevent the evil practice of duelling as they may deem necessary; and may require all officers, before they enter on the duties of their respective offices, to take the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be,) that I have not been engaged in a duel, by sending or accepting a challenge to fight a duel, or by fighting a duel, since the first day of January, in the year of our

Lord one thousand eight hundred and thirty-three; nor will I be so engaged during my continuance in office. So help me God."

SEC. 3. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 4. Every person shall be disqualified from holding an office or place of honor or profit under the authority of this State, who shall be convicted of having given or offered any bribe to procure his election. Laws shall be made to exclude from office and suffrage those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting under adequate penalties, all undue influence therein, from power, bribery, tumult, or other improper conduct.

SEC. 5. No person who denies the being of a God, or a future state of rewards and punishments, shall hold any office in the civil department of this State.

SEC. 6. No laws of a general nature, unless otherwise provided for, shall be enfored until sixty days after the passage thereof.

41 SEC. 7. No money shall be drawn from the treasury but in consequence of an appropriation made by law; nor shall any appropriation of money for the support of any army be made for a longer term than one year.

SEC. 8. No money from the treasury shall be appropriated to objects of internal improvement, unless a bill for that purpose be approved by two-thirds of both branches of the legislature; and a regular statement and account of the receipts and expenditures of public moneys shall be published annually.

SEC. 9. No laws shall ever be passed to raise a loan of money upon the credit of the State, or to pledge the faith of the State for the payment or redemption of any loan or debt, unless such law be proposed in the senate or house of representatives, and be agreed to by a majority of the members of each house, and entered on their journals with the yeas and nays taken thereon, and be referred to the next succeeding legislature, and published for three months previous to the next regular election, in three newspapers of this State, and unless a majority of each branch of the legislature so elected, after such publication, shall agree to and pass such law, and in such case the yeas and nays shall be taken and entered on the journals of each house: *Provided*, That nothing in this section shall be so construed as to prevent the legislature from negotiating a further loan of one and a half million of dollars, and vesting the same in stock reserved to the State by the charter of the Planter's Bank of the State of Mississippi.

SEC. 10. The legislature shall direct by law in what manner and in what courts suits may be brought against the State.

SEC. 11. Absence on business of this State, or of the United
42 States, or on a visit, or necessary private business shall not cause a forfeiture of citizenship or residence once obtained.

SEC. 12. It shall be the duty of the legislature to regulate by law the cases in which deductions shall be made from salaries of public officers for neglect of duty in their official capacity, and the amount of such deduction.

SEC. 13. No member of Congress nor any person holding any office of profit or trust under the United States (the office of postmaster excepted) or any other State of the Union, or under any foreign power, shall hold or exercise any office of trust or profit under this State.

SEC. 14. Religion, morality, and knowledge, being necessary to good government, the preservation of liberty, and the happiness of mankind, schools and the means of education, shall forever be encouraged in this State.

SEC. 15. Divorces from the bonds of matrimony shall not be granted, but in cases provided for by law, by suit in chancery.

SEC. 16. Returns of all elections by the people shall be made to the secretary of state, in such a manner as may be prescribed by law.

SEC. 17. No new county shall be established by the legislature which shall reduce the county or counties, or either of them, from which it may be taken, to less contents than five hundred and seventy-six square miles, nor shall any new county be laid off of less contents.

SEC. 18. The legislature shall have power to admit to all the rights and privileges of free white citizens of this State all such persons of the Choctaw and Chickasaw tribes of Indians as shall choose to remain in this State upon such terms as the legislature may from time to time deem proper.

43

ARTICLE VIII.

SEC. 1. The institution of slavery having been destroyed in the State of Mississippi, neither slavery nor involuntary servitude otherwise than in the punishment of crimes, whereof the party shall have been duly convicted, shall hereafter exist in this State; and the legislature at its next session, and thereafter as the public welfare may require, shall provide by law for the protection and security of the person and property of the freedmen of the State, and guard them and the State against any evils that may arise from their sudden emancipation.

Inserted by ordinance, adopted and approved August 21st, 1865.

MODE OF REVISING THE CONSTITUTION.

Whenever two-thirds of each branch of the legislature shall deem any change, alteration, or amendment necessary to this constitution, such proposed change, alteration, or amendment shall be read and passed by a majority of two-thirds of each house respectively on each day, for three several days; public notice thereof shall then be given by the secretary of state at least six months preceding the next general election, at which the qualified electors shall vote di-

rectly for or against such change, alteration, or amendment; and if it shall appear that a majority of the qualified electors voting for members of the legislature shall have voted for the proposed change, alteration, or amendment, then it shall be inserted by the next succeeding legislature as a part of this constitution, and not otherwise.

44 SCHEDULE.

SEC. 1. All rights vested, and all liabilities incurred, shall remain the same as if this constitution had not been adopted.

SEC. 2. All suits at law or in equity, now pending in the several courts of this State, may be transferred to such court as may have proper jurisdiction thereof.

SEC. 3. The governor, and all officers, civil and military, now holding commissions under authority of this State, shall continue to hold and exercise their respective offices until they shall be superseded pursuant to the provisions of this constitution, and until their successors be duly qualified.

SEC. 4. All laws now in force in this State, not repugnant to this constitution, shall continue to operate until they shall expire by their own limitation, or be altered or repealed by the legislature.

SEC. 5. Immediately upon the adoption of this constitution, the president of this convention shall issue writs of election, directed to the sheriffs of the several counties, requiring them to cause an election to be held on the first Monday, and day following, in December next, for members of the legislature, at the respective places of holding elections in said counties, which elections shall be conducted in the manner prescribed by the existing election laws in this State; and the legislature thus elected shall continue in office until the next general election, and shall convene at the seat of government on the first Monday in January, eighteen hundred and thirty-three; and shall, at their first session order an election to be held in every county of this State, on the first Monday in May, and day following, eighteen hundred and thirty-three, for all State and county officers under
45 this constitution, (members of the legislature excepted,) and the officers then elected shall continue in office until the succeeding general election and after, in the same manner as if the election had taken place at the time last aforesaid.

SEC. 6. Until the first enumeration shall be made, as directed by this constitution, the apportionment of senators and representatives among the several districts and counties in this State shall remain as at present fixed by law.

[Amendment number one, approved February 2d, 1846, relative to slaves, abolished and stricken out by convention held in August, 1865.]

AMENDMENT II.

The twentieth section of the fourth article so altered and changed to read as follows to wit:

SEC. 20. The qualified electors of each county shall elect five persons, by districts, for the term of two years, who shall constitute a board of police for each county, a majority of whom may transact business; which body shall have full jurisdiction over roads, highways, ferries, and bridges, and all other matters of county police, and shall order all county elections to fill vacancies that may occur in the offices of their respective counties. The clerk of the court of probate shall be the clerk of the board of county police.

Proposed by act approved March 9th, 1850.

Inserted by act approved March 12th, 1852.

AMENDMENT III.

The sixteenth section of the fourth article stricken out and abrogated, and in lieu thereof, the following section, adopted and inserted, to wit:

46 SEC. 16. Chancery courts, with full jurisdiction in all matters of equity, shall be held in each judicial district, by the circuit judge thereof, at such times and places as may be directed by law. The superior court of chancery, and the several vice-chancery courts, shall continue as now organized until the first Monday of November, one thousand eight hundred and fifty-seven, for the disposition of causes now depending therein. The legislature shall provide by law for the preservation of the records of the said superior court of chancery, and of said vice-chancery courts, and also for the transfer of all causes that may remain undetermined therein to other courts for final decision.

Proposed by act approved March 2d, 1854.

Inserted by act approved February 6th, 1856.

AMENDMENT IV.

Additional article added as follows, to wit:

Article.—All public officers in this State, legislative, executive, and judicial, whose terms of office expire at the general election to be held in the year one thousand eight hundred and fifty-seven, or at any subsequent general election, shall continue to hold their offices until the first Monday of January next following the expiration of said terms, and until their successors shall be qualified: *Provided*, Such of said officers as are required to give bond for the discharge of their duties shall give bond and security for said extended term, as may be provided by the legislature; and the terms of office of all officers chosen at the general election in the year eighteen hundred and fifty-seven, or at any subsequent general election, shall commence on the first Monday of January next succeeding the election, and shall

47 continue for the time now fixed by the constitution, and until their successors shall be qualified.

Proposed by act approved March 2d, 1854.

Inserted by act approved February 6th, 1856.

AMENDMENT V.

The following section, to be numbered seven, added to the schedule, and made part of the constitution, to take the place of all conflicting provisions now contained in the constitution, to wit:

SEC. 7. All general elections by the people of this State shall be held on the first Monday of October, and be concluded in one day. On the first Monday of October, 1857, and biennially thereafter, an election shall be held for representatives in Congress and all State officers and members of the legislature, except for officers and senators entitled to hold over after November, 1857, who shall continue in office until their successors are entitled to succeed them therein. The legislature shall convene on the first Monday of November, 1857, and biennially thereafter, but may be specially convoked by the governor at other times. The governor's official term shall commence on the third Monday of November, and that of secretary of state, auditor of public accounts, State treasurer, and attorney general, on the first Monday of January next after his and their election; but the attorney general shall hold his office as heretofore, for the term of four years. On the first Monday of October, 1858, and biennially thereafter, an election shall be held for all county, district, judicial, and ministerial officers, (except officers who may then be entitled to hold over after January, 1859, or until the time of holding another election,) and the official terms of all such officers then and thereafter elected, shall commence on the first Monday of January next after this election; but all such officers elected in 1855, or previously, whose official terms, in the absence of this provision, would expire in November, 1857, shall continue in office until the first Monday of January, 1859.

Proposed by act approved March 2d, 1854.

Inserted by act approved February 2d, 1856.

I, Jacob Shall Yerger, president of the convention of delegates of the people of the State of Mississippi, which assembled at Jackson, on Monday, the 14th day of August, 1865, hereto sign my name, and attest that the foregoing is the constitution of the State of Mississippi as amended by said convention, together with all previous amendments thereto left in force by said convention, the same having been delivered to me as such by the committee appointed to examine and report the same.

Done and published at Jackson, State of Mississippi, this 26th day of August, A. D. 1865, and 90th year of the independence of the United States of America.

J. S. YERGER,
President of the Convention and Delegate from the County of Washington.

50 *Ordinances, resolutions, and constitutional amendments, adopted by the Mississippi constitutional convention, August, A. D. 1865.*

CHAPTER I.

AMENDMENTS to the constitution of the State of Mississippi.

First. That the constitution shall be amended by abolishing and striking out sections one, two, and three of article seven, under the title "slaves," and amendment number one, approved February 2d, 1846, relative to slaves.

Second. That a provision in the following language shall be inserted in the constitution as article eight, to wit: The institution of slavery having been destroyed in the State of Mississippi, neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted, shall hereafter exist in this State; and the legislature at its next session, and thereafter as the public welfare may require, shall provide by law for the protection and security of the person and property of the freedmen of this State, and guard them and the State against any evils that may arise from their sudden emancipation.

Third. That the twelfth section of the declaration of rights be amended by the insertion of the following proviso, to wit: *Provided*, That the legislature, in cases of petit larceny, assault, assault and battery, affray, riot, unlawful assembly, drunkenness, vagrancy, and other misdemeanors of like character, may dispense with an inquest of a grand jury, and may authorize prosecutions before justices
51 of the peace or such other inferior court or courts as may be established by the legislature, and the proceedings in such cases shall be regulated by law.

Adopted August 21st, 1865.

CHAPTER II.

AN ORDINANCE to amend 7th section of 4th article of the constitution.

Amend the 7th section of the 4th article of the constitution of the State, so as to read as follows: The high court of errors and appeals shall be held at least once in each year, at the seat of government, and at such other place or places in the State as the legislature may direct.

Adopted August 23d, 1865.

CHAPTER III.

AN ORDINANCE to amend 18th section of the 4th article of the constitution.

SECTION 1. *Be it ordained and declared, and it is hereby ordained and declared*, That the 18th section of the 4th article of the constitution of the State of Mississippi be so amended as to read as follows, to wit: A court of probates shall be established in each county in this State, with jurisdiction in all matters testamentary, and of administration in minors' business, and allotment of dower in cases of idiocy

and lunacy, and of persons non compos mentis. The judge of said court shall be elected by the qualified electors of the respective counties for the term of two years.

Adopted August 23d, 1865.

CHAPTER IV.

AN ORDINANCE concerning the compensation of members of the legislature.

SEC. 1. *Be it ordained by the people of the State of Mississippi in convention assembled*, That the 25th section of article 3 of the State constitution, so far as it prohibits an increase of the compen-
52 sation of members of the legislature from taking effect during the session at which it is made, be, and the same is hereby, suspended until after the close of the next session of that body.

Adopted August 23d, 1865.

CHAPTER V.

RESOLUTION providing for enrolment and duplicate copies of ordinances and constitution as amended.

Resolved, That the Hon. Wm. Yerger, Hon. A. R. Johnston, and Hon. Geo. L. Potter be appointed a special committee, who shall, as soon after the adjournment of this convention as practicable, see that the constitution of the State of Mississippi, as amended and adopted by this convention, is properly enrolled in duplicate, and signed and attested by the president of this convention, and present one copy thereof to the provisional governor, and request him to forward the same to the President of the United States, and file the other copy thereof in the office of the secretary of state; and said committee shall also see that all the ordinances adopted by this convention are properly enrolled and attested in duplicate; one copy thereof to be presented to the provisional governor, and the other to be deposited in the office of secretary of state.

Adopted August 24th, 1865.

CHAPTER VI.

AN ORDINANCE in relation to the ordinance of secession and other ordinances and resolutions adopted by a former convention held in the city of Jackson on the 7th January, 1861, and on the 25th day of March, 1861.

SECTION 1. *Be it ordained by the people of the State of Mississippi in convention assembled*, That an ordinance passed by a former convention of the State of Mississippi, on the 9th day of January, 1861, entitled "An ordinance to dissolve the union between the State of Mississippi and other States united with her under the compact entitled 'The Constitution of the United States of America,'" is hereby declared to be null and void.

53 SEC. 2. *Be it further ordained*, That the following ordinances and resolutions, passed by said former convention of the State of Mississippi, which assembled in the city of Jackson, on Monday, the 7th day of January, 1861, and on the 25th day of March, 1861, be, and the same are hereby, repealed, viz:

"To regulate the military system of the State of Mississippi." Passed 23d January, 1861.

"To amend the constitution of the State of Mississippi in certain particulars." Passed January 26th, 1861.

"Concerning the jurisdiction and property of the United States of America in the State of Mississippi." Passed January 16th, 1861.

"Supplemental to an ordinance concerning the jurisdiction and property of the United States of America in the State of Mississippi." Passed 26th January, 1861.

"To provide for postal arrangements in the State of Mississippi." Passed January 12th, 1861.

"Further to provide for postal arrangements in Mississippi." Passed January 26th, 1861.

"To provide for the formation of a southern confederacy." (No date thereto.)

"To regulate the right of citizenship in the State of Mississippi." Passed 26th January, 1861.

"Providing a permanent counsel of three for the governor of this State." Passed 26th January, 1861.

"To provide for the purchase of arms, munitions, and military equipments, and for other purposes." Passed 26th January, 1861.

"To provide for the representation of the State of Mississippi in the congress of the southern confederacy." Passed 26th January, 1861.

"To provide for surveys and fortifications of military sites within the State of Mississippi." Passed 26th January, 1861.

"To authorize the governor to borrow a sufficient amount of money to defray the expenses of the troops now in the field." (No date thereto.)

"To provide for the formation of a southern confederacy." (No date thereto.)

"To adopt and ratify the constitution adopted by the convention at Montgomery, Alabama." Passed March 29th, 1861.

54 "In relation to lands in the State of Mississippi belonging to Indian orphans." Passed March 29th, 1861.

"To define the power of the legislature of this State in relation to ordinances and resolutions adopted by the convention." Passed March 30th, 1861.

"In reference to the marine hospital at Vicksburg." Passed March 30th, 1861.

"To provide a coat of arms and flag for the State of Mississippi." Passed March 30th, 1861.

"To authorize the entry and sale of waste and unappropriated lands in the State of Mississippi." Passed March 28th, 1861.

"To revise and amend the law in relation to foreign insurance companies." Passed March 27th, 1861.

"To provide for the appointment of electors of president and vice president of the Confederate States of America." Passed March 30th, 1861.

"To alter and modify the ordinance entitled 'An ordinance con-

cerning the jurisdiction and property of the United States in the State of Mississippi.'" Passed March 30th, 1861.

Provided, That an ordinance, bearing no date, entitled "An ordinance to raise means for the defence of the State," and an ordinance passed March 29th, 1861, entitled "Supplemental to an ordinance entitled 'An ordinance to raise means for the defense of the State,'" are intended to be left by this convention for such action on the same as the people of the State, by their legislature, may deem it right and proper to take, having in view the honor and prosperity of the State.

SEC. 3. *Be it further ordained*, That this ordinance shall be in force from and after its passage.

Adopted, August 22d, 1865.

CHAPTER VII.

AN ORDINANCE to legalize and support the legislative enactments of the State of Mississippi, passed since the 9th day of January, 1861, and for other purposes.

SECTION 1. *Be it ordained by the people of the State of Mississippi in convention assembled*, That all laws and parts of laws enacted
55 by the legislature of the State of Mississippi, since the 9th day of January, 1861, so far as the same are not in conflict with, or repugnant to, the Constitution of the United States, and the laws made in pursuance thereof, or of the constitution of this State as it existed on the 1st day of January, 1861, or in aid of the late rebellion, except the laws in relation to crimes and misdemeanors, and except an act entitled "An act to enable the railroad companies of this State to pay the moneys borrowed by them," approved December 7th, 1863, be, and the same are hereby, ratified and confirmed, and declared to be valid and binding from their respective dates; and the same shall remain in full force and effect until altered or repealed according to law.

SEC. 2. *Be it further ordained*, That the official acts of all acting public officers of the State of Mississippi, in possession of any office, and exercising the functions thereof, since the 9th day of January, A. D. 1861, and done and performed under color of the laws of said State, and in pursuance thereof, and not inconsistent with the Constitution of the United States, and the laws made in pursuance thereof, or of the constitution of the State of Mississippi, or in aid of the late rebellion, be hereby legalized, ratified, and confirmed, and declared to be lawful acts in regard to the persons interested therein, or affected thereby, whether such person be lawfully entitled to hold such office or not, and whether such person be lawfully qualified or not.

SEC. 3. *Be it further ordained*, That all official acts, proceedings, judgments, decrees, and orders of the several courts of the State, including the boards of county police, regular upon their face, and rendered under color, and in the ordinary course of law, together with all sales made by judicial officers, executors, administrators, guardians, and all other persons acting in a fidiciary capacity, in regular and due form, and where the same have been executed by the

payment of the purchase money, are hereby legalized, ratified, and confirmed; subject, nevertheless, to the right of appeal, writs of error, and supersedeas, according to the ordinary rules and forms of law: *Provided*, That in all cases in which judgments have been rendered in the circuit courts in this State since the 9th of January, 1861, and prior to this date, the party against whom such judgment has been rendered shall be entitled to a new trial, upon his filing an affidavit that he was unavoidably absent from the court where
56 the judgment was rendered, at the time of its rendition, and that he had no attorney present in the court, and that he believes that the judgment is unjust: *Provided further*, That in cases of sales made as aforesaid, and in all other cases in which a party has executed a note or agreement in writing for the payment of money, parol testimony shall be admissible to prove whether or not such contract contemplated specie currency, and to show what amount in specie the payee or obligee has a right equitably to demand or recover: *Provided further*, That executors, administrators, and other officers acting in a fidiciary capacity shall have power to compromise and agree with persons against whom they hold notes, bonds, judgments, or other evidences of debt, as to the real value of the property for which such evidences of debt were given, subject to the approval of the judge of probate of their respective counties: *Provided*, That all acts and laws authorizing the payment of dues to the State in confederate money or notes, and all laws authorizing the distillation of spirits on State account, shall no longer be in force, but are hereby declared henceforth inoperative: *Provided*, That this ordinance shall not make valid any act passed by said legislature which may conflict with any ordinance passed by this convention.

SEC. 4. *Be it further ordained*, That all marriages entered into in this State since the 9th day of January, 1861, by persons capable of contracting, are valid and binding, and are hereby ratified and confirmed, and declared to be legal and valid from their respective dates, whether celebrated with the usual forms and ceremonies or not.

SEC. 5. *Provided*, That it is not intended by this ordinance to validate or invalidate the act of any officer or person acting as an officer, in receiving any moneys payable to the State from the railroad companies, but to leave the same subject to adjudication by the courts in the future.

Adopted August 23d, 1865.

CHAPTER VIII.

AN ORDINANCE providing for a general and special election.

SECTION 1. *The people of the State of Mississippi in convention assembled do ordain and declare, and it is hereby ordained and de-*
57 *clared*, That a general election shall be held on the first Monday in October next, according to the constitution and the election laws of the State as they existed on the first day of January, 1861, for representatives in Congress, and all State officers, and members of the legislature. The several Congressional districts shall be

the same, and the time of holding the election for representatives in Congress the same as fixed and established by the legislature in the year A. D. 1857. The legislature shall convene on the third Monday in October, 1865, and be organized and classified as the constitution directs. A special election shall also be held at the time of said general election, (the first Monday in October, A. D. 1865,) for all county, district, judicial, and ministerial officers; and the officers so elected shall hold their offices until their successors are elected and qualified, and enter upon the duties of their respective offices, according to the constitution and laws; and the term of all such State, county, district, judicial, and ministerial officers, so elected, shall commence on the third Monday in October, 1865. No person shall be qualified as an elector, or be eligible to any office at said election, unless, in addition to the qualifications required by the constitution and election laws aforesaid, he shall have taken the amnesty oath prescribed in the proclamation of the President of the United States, of the 29th day of May, 1865; and immediately after the adjournment of the convention, the president thereof shall issue writs of election, directed to the sheriffs in the several counties in the State, requiring them to cause said elections to be held according to the election laws in force and existing on said first day of January, 1861.

Adopted August 21st, 1865.

CHAPTER IX.

AN ORDINANCE in relation to special courts of equity.

SECTION 1. *Be it ordained*, That the special courts of equity heretofore, and that may be hereafter established in this State by the provisional governor thereof, be, and the same are hereby, recognized to be in existence, but that in all cases the right and benefit of exceptions, bills of exceptions, writs of error, supersedeas, and appeals from said court or courts, to the high court of errors and ap-
58 peals, for the revision and judgment of the latter court, shall be, and are hereby, secured to any party litigant in said court or courts, who may desire the same, as is now provided for and regulated by the laws of the State in cases of exceptions, writs of error, supersedeas, and appeals from the circuit and chancery courts of this State to the said court of errors and appeals; and the said court of errors and appeals shall take cognizance and jurisdiction of such cases, as in the case of appeal and writ of error from the circuit and chancery courts of this State: *Provided*, That such special courts and the proceedings had therein, after the courts known to the constitution and laws of this State are established, shall not be recognized beyond the then unfinished and instituted business of the same; and the records and papers of said special courts shall, upon their expiration, be deposited in the office of the clerks of the several circuit courts of this State, in whose counties the said special court or courts are or may be held, for the safe-keeping thereof, and may be authenticated thereafter as other records of said circuit and chancery courts.

Adopted August 23d, 1865.

CHAPTER X.

AN ORDINANCE to confer certain powers upon the legislature.

SEC. 1. *Be it ordained*, That the legislature of this State shall have full and complete, ample and plenary power and right to ascertain, adjust, and settle any and all pecuniary liability and indebtedness of this State, or the citizens thereof, to the government of the United States of America, under and by reason of the revenue laws of the latter, either past, present, or future; and to provide by law or otherwise, in such way and manner, and on such terms as the legislature may, in its opinion, deem or declare to be most wise, judicious, and expedient for the ascertainment, adjustment, and present or ultimate settlement and payment of the same; hereby intending to confer, and actually conferring upon the legislature of this State full and absolute power and right to pledge and use the faith and credit of the State, and to do and perform whatever is or may be necessary, proper, or expedient in the premises aforesaid.

Adopted August 24th, 1865.

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CHAPTER XI.

RESOLUTION providing for the appointment of a committee to report to the legislature what changes are necessary in the existing laws of the State.

Resolved, That a committee of three be appointed by the president, whose duty it shall be to prepare and report to the next legislature for its consideration and action, such laws and changes in existing laws of this State, as to said committee may deem expedient, in view of the amendments to the constitution made by this convention.

Adopted August 23d, 1865.

CHAPTER XII.

RESOLUTION providing for compensation of committee to revise the statutes of this State.

Resolved, That it shall be the duty of the next legislature to appropriate for the purpose whatever sum may be necessary to pay the committee appointed by this convention, on the subject of the revision of the statutes of the State, a compensation of ten dollars per day each for the time during which they may be employed in their said duties.

Adopted August 24th, 1865.

CHAPTER XIII.

RESOLUTION providing for the appointment of four commissioners.

Resolved, That the president of this convention appoint four commissioners to confer with the authorities of the United States, at Washington, relative to the utility and necessity of rebuilding the levees on the Mississippi river, and that they endeavor to obtain, by loan or otherwise, such funds as may be necessary for that purpose,

and also make an arrangement, if possible, to procure a competent force of laborers to finish the work during the present year. But in the event of any loan or debt being created for the purpose aforesaid, the taxes necessary to reimburse or pay the same shall only be levied by the legislature upon such counties or districts as may be protected by the levees from inundation: *Provided*, That the aforesaid commissioners shall not be authorized to pledge the faith of the State for the payment of any money by them borrowed, or aid procured, for the purposes expressed in this ordinance.

Adopted August 24th, 1865.

CHAPTER XIV.

RESOLUTION providing for the printing of the constitution as amended, and for the ordinances, proceedings, and debates of this convention.

Resolved, That twenty-five hundred copies of the constitution, as amended, ordinances, proceedings, and debates of this convention, are hereby authorized to be published in pamphlet form, in the style and manner of the pamphlet laws of the State, excepting marginal notes. Said proceedings, debates, ordinances, and constitution, when so published, shall be delivered to the secretary of state, whose duty it shall be to distribute the same, in the same manner that the pamphlet laws and journals of the State are required to be distributed, except that one copy shall be sent to each member of this convention. The public printer shall receive for his services the necessary cost of issuing said reports, and thirty-five per cent. added thereto; and the auditor of public accounts is hereby authorized and required to issue his warrant on the proper officer for the amount of the account for said printing; the same being first approved by the secretary of state.

Resolved, further, That said printer be allowed the same length of time to complete the pamphlet, proceedings, and debates as allowed by law for printing the laws and journals of the State, in the year 1861, and his duties and responsibilities as printer of the convention shall not cease until the work aforesaid is accomplished.

Resolved, further, That a committee of three, to consist of Messrs. Johnston, Yerger, and Potter, of the county of Hinds, are hereby appointed to read the proof sheets and see that the printed copy corresponds with the action of this convention.

Adopted, August 24th, 1865.

CHAPTER XV.

PAY of officers and members of the convention.

The committee appointed to take into consideration the pay of officers and members of this convention have had the same under consideration, and beg leave to report that, in their opinion, the compensation should be as follows, to wit, president, twelve ($12) dollars per diem; members, each, eight dollars ($8) per diem; secretary,

fifty ($50) dollars per diem; sergeant-at-arms, eight ($8) dollars per diem; door-keeper, six ($6) dollars per diem; pages, each two ($2) per diem.

The president and members to receive eight dollars for every twenty miles of travel in going to and returning from the convention on the most direct route.

Adopted August 23d, 1865.

CHAPTER XVI.

REPORT concerning short-hand reporters.

The committee appointed to employ two competent short-hang writers to report accurately and fully the debates of this body, have performed that duty by employing for that purpose Messrs. S. W. Burnham and A. L. Bartlett, of New Orleans, at a compensation of fifteen ($15) dollars a day each.

Adopted August 17th, 1865.

CHAPTER XVII.

RESOLUTION allowing extra time and compensation to official reporters of the debates.

Resolved, That the official reporters of the debates of this convention be allowed five days after to-day for the purpose of extendind and revising their notes; and that they also be allowed a compensation each of ten dollars per day, in addition to the allowance heretofore made them, and that the time of their services be computed from the organization of the convention.

Adopted August 24th, 1865.

62 CHAPTER XVIII.

AN ORDINANCE making certain appropriations therein named.

SECTION 1. *Be it ordained by the people of the State of Mississippi in convention assembled*, That the president of this convention shall issue his warrant for the following accounts, to be paid out of any money under his control not otherwise appropriated, which shall be in full of said accounts, to wit.

To T. C. McMackin, for ice, candles, water-buckets, stationery, etc., furnished the convention, the sum of one hundred and seventy-five dollars, ($175 00.)

To John K. Yerger, postmaster, for postage, the sum of twenty-four dollars and eighty-two cents, ($24 82.)

To E. M. Yerger, for Daily News during session, two hundred dollars, ($200 00.)

To printing three hundred copies reports, with ordinance annexed, (J. T. Harrison, chairman,) thirty dollars, ($30 00.)

To printing three hundred copies reports, with ordinance annexed, (A. R. Johnston, chairman,) fifty dollars and twenty-five cents, ($50 25.)

To printing two editions yeas and nays, thirty-six dollars and seventy-five cents, ($36 75.)

To three hundred copies Ordinance No. 2, thirty dollars, ($30 00.)

To three hundred copies minority report, twenty-six dollars and fifty cents, ($26 50.)

To printing three hundred minority reports on ordinance of secession, twenty-six dollars and fifty cents, ($26 50.)

To printing three hundred ordinances by the loyal people of the State, ($26 50.)

To two editions warrants, (150 each,) twenty-six dollars and fifty cents, ($26 50.)

To one hundred and fifty copies writs of election, thirty dollars, ($30 00.)

To three hundred tabular views, one hundred and fifty dollars, ($150 00.)

To publishing public ordinances, one hundred dollars, ($100 00.)

To publishing first day's proceedings, (twenty squares,) twenty dollars, ($20 00.)

63 To publishing second day's proceedings, (ten squares,) ten dollars, ($10 00.)

To publishing third day's proceedings, (six squares,) six dollars, ($6 00.)

To publishing fourth day's proceedings, (sixty squares,) sixty dollars, ($60 00.)

To publishing fifth day's proceedings, (twenty squares,) twenty dollars, ($20 00.)

To publishing sixth day's proceedings, (nine squares,) nine dollars, ($9 00.)

To publishing seventh day's proceedings, (twenty-four squares,) twenty-four dollars, ($24 00.)

To publishing eighth day's proceedings, (thirty-five squares,) thirty-five dollars, ($35 00.)

To publishing ninth day's proceedings, sixty-squares, sixty dollars, ($60 00.)

To publishing debates, (eighty-two squares,) eighty-two dollars, ($82 00.)

To publishing writ of election, (ten squares,) one month, sixty dollars, ($60 00.)

Total to E. M. Yerger, one thousand one hundred and nineteen dollars, ($1,119 00.)

To the Daily Mississippian, (A. N. Kimball, publisher,) for daily paper during session, two hundred dollars, ($200 00.)

To J. J. Shannon, for one hundred copies Daily Clarion during the session of the convention, two hundred dollars, ($200 00.)

To A. Reed, (freedman,) for services in attending on sittings of the convention, bringing water, etc., and two days in cleaning up the hall, thirteen days, fifty dollars, ($50 00.)

To Alexander Moore, (freedman,) for services in attending on sittings of the convention, bringing water, etc., and two days services in cleaning up the hall, thirteen days, fifty dollars, ($50 00.)

Adopted August 24th, 1865.

CHAPTER XIX.

RESOLUTION allowing secretary of convention five extra days to complete the duties assigned him.

Resolved, That J. L. Power, secretary of the convention, be allowed five extra days after adjournment to complete the duties
64 assigned him, and that he be allowed for such services the same rate of compensation agreed to by the convention yesterday.

Adopted August 24th, 1865.

CHAPTER XX.

AN ORDINANCE to reduce the penalty of the official bond of the sheriff and clerks of Hancock county.

SEC. 1. *Be it ordained*, That the penalty of the official bond of the sheriff of Hancock county be reduced to five thousand dollars, and the penalty of the official bond of the circuit and probate clerk of said county be reduced to twenty-five hundred dollars each, until the legislature of the State of Mississippi shall by law increase or otherwise change them, or either of them.

Adopted August 23, 1865.

CHAPTER XXI.

RESOLUTION in relation to adjournment of the convention.

Resolved, That this convention adjourn to-day, at two o'clock p. m., to be called together by the president of this convention if the exigencies of the country require it; and if no such necessity arise within six months from this date, then this convention shall stand adjourned sine die: *Provided*, That in case of the death of the president, the convention may be called by the governor of the State.

Adopted August 24, 1865.

J. S. YERGER,
President of Convention.

Attest:

J. L. POWER,
Secretary.

65 OFFICE OF SECRETARY OF STATE,
Jackson, Miss., August 31, 1865.

I, John H. Echols, secretary of state of the State of Mississippi, do hereby certify that the foregoing printed constitution, amendments to the constitution, ordinances, and resolutions, are just and true copies of the originals, as adopted by the convention held at Jackson in the month of August, 1865, and now on file in this office.

Given under my hand and the great seal of the State, affixed at the city of Jackson, this 31st day of August, A. D. 1865.

[L. S.] JOHN H. ECHOLS,
Secretary of State.

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In the Supreme Court of the United States.

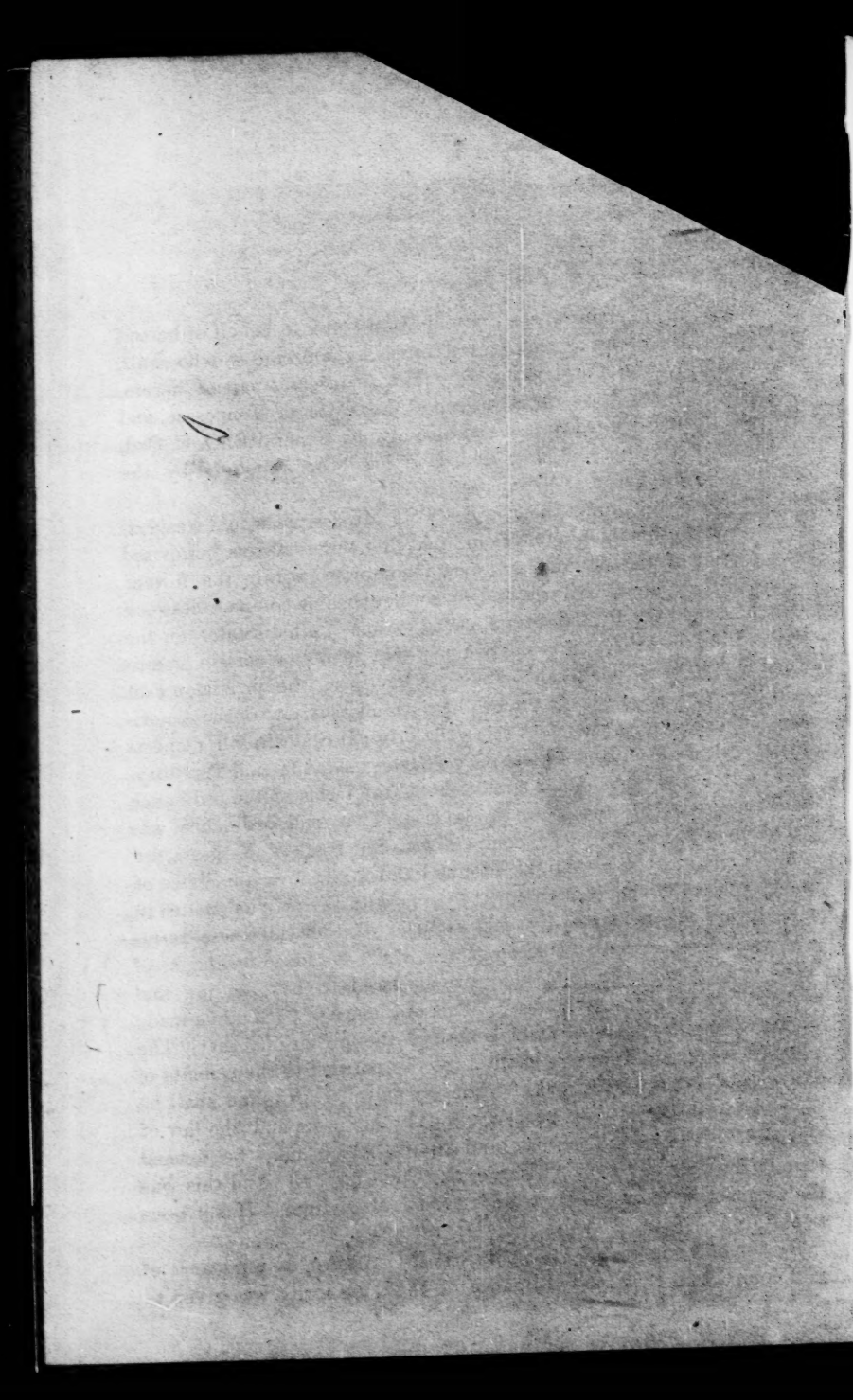
THE STATE OF MISSISSIPPI

vs.

ANDREW JOHNSON, E. O. C. ORD, AND OTHERS.

IN EQUITY.

W. L. SHARKEY,
R. J. WALKER,
Counsel.



To the Supreme Court of the United States:

The bill of complaint of the State of Mississippi, in behalf of herself and such other States as may be interested in the premises, who shall, by consent of the Court, properly make themselves parties hereto, against ANDREW JOHNSON, a citizen of the State of Tennessee, and President of the United States, and also against General E. O. C. Ord, a citizen of the State of Maryland, who has been appointed by the said Andrew Johnson as hereinafter stated.

Humbly complaining, the said State of Mississippi would respectfully show to this Honorable Court that her territory was composed of a portion of the territory or domain comprised within the former limits of the State of Georgia, and, by an irrevocable compact between that State and the United States, ceded to the United States on the 24th of April, 1802; that said compact was made on certain conditions which were unalterable, among which was the provision that said Territory should become and forever remain a State of the American Union, "on the same footing as the original States in all respects whatsoever." Another of these provisions extended to said Territory, and to said new State, when admitted, all the terms of the ordinance of 13th July, 1787, except as to slavery That said ordinance was based upon and ratified as a compact with the State of Virginia, by which certain States were to be admitted and forever remain States of the American Union, "on an equal footing with the original States in all respects whatsoever." By said compact of 1802, all these terms and conditions, as well of the compact of 1802, as of said ordinance of 1787, (which were unalterable,) were declared to be "binding and conclusive on the United States." This ordinance of 1787, thus made a part of the compact of 1802, contained the provisions that "The inhabitants of said Territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of a trial by jury." "No man shall be deprived of his liberty or property, but by his peers and the law of the land." The said Territory and States which may be formed therein shall forever remain a part of this Confederacy. And this was the compact between the United States and Mississippi. Has it been kept?

By act of Congress of 1st of March, 1817, passed in pursuance of said compact of 1802, and ordinance of 1787, authority was given to

the people of the western part of Mississippi Territory "to form a Constitution and State government, and for the admission of such State into the Union, upon the same footing with the original States in all respects whatesover." By this act the Constitution of the proposed State was required to conform to said compact of 1802, and said ordinance of 1787, (except as aforesaid,) and the said provisions were declared to be "irrevocable," "without the consent of the United States." In pursuance of these acts, ordinances, and compacts, the people of said Territory of Mississippi, on the 15th of August, 1817, adopted a State Constitution, with an ordinance thereto attached, and made a part thereof, and declared to be "irrevocable without the consent of the United States." On the 10th of December, 1817, Congress, by a joint resolution, admitted said State into the Union, upon the terms and conditions before stated, and especially reaffirming the ordinance of 1787 in its application to said State. That ordinance, as we have before seen, provided for the admission of States which were forever to remain States of the American Union, and was made "fundamental" and "unalterable." It was thus, besides the general provisions of the Federal Constitution, that Mississippi became a State of the Union, under compacts with Georgia, Virginia, and said State of Mississippi, all of which were "irrevocable" and "unalterable," either by said State or by the United States. It is respectfully submitted, that, (independent of these special compacts,) by the provisions of the Federal Constitution, the State of Mississippi could by no act of hers withdraw from the Union, nor could she be excluded therefrom by Congress, and that all opposing acts of said State, or of Congress, being contrary to the Federal Constitution, which is "the Supreme law of the land," are null and void, and in a proper case, we believe, will be so declared by this Court. In this case, however, besides the protection of the constitutional rights of a State, here are compacts "fundamental," "irrevocable," and "unalterable," securing forever to the State of Mississippi her rights as a State of this Union. Such compacts, and the rights acquired under them, we believe this Court will regard it as its duty to maintain and protect in the same manner, at least, as it would enforce between individuals, by injunction or otherwise, the specific performance of contracts.

The said State of Mississippi avers and charges, that having been admitted as a State of the Union in 1817, she has ever since continued to be so, and is so now; that she has a State constitution, republican in form, and a State government in complete and successful operation under her constitution, with all its departments filled and administered

by proper functionaries, in as proper and full a manner as any State in the Union, and hence she is entitled by the Constitution of the United States, and by the covenants and compacts aforesaid, to be regarded as a State of the Union in all respects. She acknowledges and claims that the Constitution of the United States is the supreme law of the land; and when her constitutional rights, or the covenant with Georgia, are invaded, or with Virginia under the ordinance of 1787, she has a right to appeal to this honorable tribunal, established as it is by the Constitution, to decide in the last resort, "in all cases in which a State is a party," and to give appropriate and adequate relief, especially when, as in this case, there is otherwise no remedy to prevent her utter annihilation; and if there be no remedy here, then her condition is without redress, and her most sacred rights may be be invaded, and her very existence destroyed.

The said State further shows and charges, that having become a member of the Union as aforesaid, in 1817, she surrendered certain rights to the United States, in consideration of perpetual protection under the Constitution, with all her rights and privileges as a State perpetually guaranteed, and that forever after it was impossible for her people, or for the State in its corporate capacity, to dissolve that connection with the other States, and any attempt to do so by secession or otherwise was a nullity, which she has admitted by engrafting in an amended constitution a solemn declaration that the pretended ordinance of secession, adopted by a portion of her people, was absolutely null and void, and she now most solemnly asserts that her connection with the Federal Government was not in any wise thereby destroyed or impaired. And she moreover avers and charges that the Congress of the United States cannot constitutionally expel her from the Union, and that any attempt which practically does so is a nullity. And she also charges and avers, that there is no provision in the Constitution of the United States which subjects her as a State to any pains, penalties, or forfeitures as a consequence of such void attempt of a portion of her people to withdraw her from the Union, all powers to punish a State by expulsion or otherwise, for any cause, having been expressly refused in the Convention which framed the Federal Constitution. She avers that her citizens lost none of their political rights, nor incurred any penalties, except what might be inflicted on them as individuals by due process of law, after trial by jury in courts having jurisdiction of their offences; and that disabilities attempted to be imposed upon her or upon her citizens, otherwise than as aforesaid, by any body of persons

are void, and violations of the Constitution of the United States, as, well as of the compact with Georgia of 1802, and with Virginia of 1787.

The said State admits that by the wrongful acts of part of her citizens, and the neglect of the Federal authorities to protect the loyal, her government became temporarily disorganized in reference to its relations with the Federal Government, but she claims that this evil has been corrected in the proper manner by the people of the State.

In concurrence with the view of the President of the United States, and the apparent sanction of the public sentiment of the whole country, the people of the State assembled in convention and established for themselves a government, republican in form, and so in practice; and she has been recognized as a State by various acts of Congress, by the official proclamation of the President, and, as she believes, by this Court. Even if any of these acts were irregular, which is not admitted, still, when the people of Mississippi did so assemble, it was an assemblage of the highest power of the State, and above the control of the President or Congress, so far as their State constitution was concerned, and neither could impart power to the people or do more than aid them, since it is a fundamental principle "that governments are instituted among men, deriving their just powers from the consent of the governed." The people assembled voluntarily and not by compulsion of the President. A copy of the original and amended constitution is herewith presented.

The said State further avers, that she has exhibited her good faith and adhesion to the Constitution of the United States, by electing Senators and Representatives to Congress, as of right and duty she was bound to do; but her Senators and Representatives have been and are wrongfully excluded from their right to participate in the Legislative Department of the Government, and her people have been compelled to pay the taxes and bear the burdens of the Government without representation. And the complainant charges, that after the exclusion of her Senators and Representatives, and after the exclusion of the Senators and Representatives, of nine other States, all, or most of whom, applied for admission, but were rejected, the representatives of twenty-six States have assembled at the seat of the Federal Government, and, legislating as the Congress of the United States, have passed an act which is now the special object of complaint, entitled "An act to provide for the more efficient government of the rebel States," which is hereto annexed as exhibit A; and an act entitled "An act supplementary to an act entitled an 'Act to provide

for the more efficient government of the rebel States,"' hereto annexed as exhibit B, and both prayed to be taken as a part of this bill. The title of these bills admits that they are States, and yet power is assumed to establish governments for them; and this assumption is founded on the pretext set out in the preamble, that no legal State governments exist in the said State of Mississippi, and other Southern States, adequate to the protection of life or property, which is believed to be wholly erroneous; since the people of Mississippi, the only source, from which State governments can emanate, have, as before stated formed for themselves a government fully adequate to the protection of life, liberty, and property.

This act, and the act supplementary thereto, utterly annihilate the State and its government, by assuming for Congress the power to control, modify, and even abolish its government—in short, to exert sovereign power over it, and the utter destruction of the State must be the consequence of their execution. They also violate a well-known salutary principle in governments, the observance of which can alone preserve them, by making the civil power subordinate to the military power, and thus establish a military rule over the States enumerated in the act, and make a precedent, by which the Government of the United States may be converted into a military despotism, in which every man may be deprived of his goods, lands, liberty, and life by the breath of a military commander, or the sentence of the military commission or tribunal, without the benefit of trial by jury, and without the observance of any of those requirements and guarantees by which the Constitution and laws so plainly protect and guard the rights of the citizen; and the more effectually to accomplish this purpose, said acts divide the ten Southern States into five military districts, and make it the duty of the President to assign an officer to the command of each district, and to place a sufficient force under him, whose will is to be the law, and his soldiers the power that executes it. It is declared to be his duty to protect all persons in their rights of person and property; to suppress insurrections, disorder, and violence; and to punish, or cause to be punished, all disturbers of the peace and criminals; and he may organize military commissions and tribunals to try offenders, when he may think proper. But, by what rule or law is he to judge of the rights of person or property? by what rule or law is he to arrest, try, and punish criminals? by what rule or law is he to judge whether they have committed crimes? The answer to these questions is plain—by his own will; for, though he may adopt the State authorities as his instruments if he will, yet he

may reject them if he will. A scope of power so broad, so comprehensive, was never before vested in a military commander in any government which guards the rights of its citizens or subjects by law. It embraces necessarily all those subjects over which the States reserved the power to legislate for themselves, as essential to their existence as States, including the domestic relations, all the rights of property, real and personal; the rights of personal security and personal liberty; and assumes the right to control the whole of the domestic concerns of the State. These acts also provide that the governments now existing in the Southern States are but provisional governments, subject to the paramount authority of Congress, which may at any time abolish, modify, control, or supercede them. These acts were vetoed by the President, but were passed over the vetoes by two-thirds of both Houses as now organized, ten States being excluded from representation in both Houses.

Now, the complainant expressly charges that, from information and belief, the said ANDREW JOHNSON, President, in violation of the Constitution, and in violation of the sacred rights of the States, will proceed, notwithstanding his vetoes, and as a mere ministerial duty, to the execution of said acts, as though they were the law of land, which the vetoes prove he would not do if he had any discretion, or that in doing so he performed anything more than a mere ministerial duty. With the view to the execution of said acts, the said ANDREW JOHNSON has assigned military commanders to the several districts to carry them into complete and full execution; and for this purpose has assigned General E. O. C. Ord, a citizen of the State of Maryland, to the command of the States of Mississippi and Arkansas, whom complainant prays may be made a defendant to this bill, and served with all proper process, &c. And complainant further avers, that the said General E. O. C. Ord will speedily enter on the discharge of said duties, unless restrained by this Honorable Court. Now, complainant avers and charges, that the execution of said acts, by enforcing them in the manner therein provided, will cause and produce immediate and irreparable mischief in the States to which it applies, as must be manifest to the Court in this, that they are repugnant to the Federal Constitution, and violate the spirit, the purpose, and the object of the compacts between Georgia, Virginia, and the United States; it will deprive the States of every attribute of state authority, and practically annihilate them as States, by converting them into subordinate dependences; it will derange the whole system of internal or domestic affairs; it will annul their legislation, and subvert their whole judicial

system, inasmuch as it declares the State government illegal; it may annul all contracts and titles to property made with reference to existing laws; it will deprive the people of their most sacred rights—their exemption from arrests except on warrant founded on affidavit, the right of the intervention of a grand jury, and their right of trial by jury—and establish arbitrary and despotic military powers on the ruins of their constitutional rights. It will produce a train of irreparable mischiefs that may not be corrected for years, as the Court will readily perceive, andt hey can only be prevented by a very speedy application of the restraining powers of this Court. But, above all, these acts, if maintained, establish a precedent by which Congress, composed of a majority of States, may, at pleasure, exclude any State, or any number of States from the American Union.

And complainants would further show, that many legal questions must arise under these bills, if the government contemplated by them be carried out, which sooner or later must come before this Court for final adjudication; and it is believed these bills will ultimately be declared unconstitutional in their whole length and breadth. As a consequence, all acts that may have been done under them must be declared void, even to the constitution which may be formed under them. The mischiefs that must result from such a state of things are incalculable. Suits without number, not only in regard to rights of property, but for punishments inflicted without authority—a total disorganization of the present government, inasmuch as no elections can be held to fill the State offices—a State of anarchy must intervene until government can be again reorganized by the people. Therefore, public policy, the good order of society, the safety of a people, call loudly for speedy redress.

And complainant also charges, that this bill is filed as a bill of peace, and to prevent endless suits and controversies, inasmuch as the execution of the acts must produce such a variety of legislation as to disturb the good order of society by driving aggrieved parties to seek redress against officers and others who may commit trespasses and crimes against the innocent. To prevent such evils is one of the common grounds of equity jurisdiction.

And the complainant avers, that this appeal is made to this Honorable Court in good faith, and not from factious motives, or from a spirit of insubordination to law, but, under a fixed belief, that these acts are in violation of the Constitution and of the compacts aforesaid, and impose no obligation on her people to observe them, unless decided to be valid by this Honorable Court; and, therefore, claims, as she

has a right to do, the deliberate determination of this Court, as the tribunal organized under the Constitution to preserve it inviolate, and to keep all the Departments of the Government within heir appropriate spheres, by trying their acts by the test of the Constitution; and she claims the exercise of this undoubted right in advance, for the purpose of preventing irreparable mischiefs so gigantic and intolerable as those which are threatened. If she should be mistaken in this, and the acts should be decided to be constitutional, she will most cheerfully yield implicit obedience to all their behests, whatever the consequences may be; all she desires is to guard her rights and the rights of her citizens, and this boon she hopes may be accorded her before it is too late, and without being subjected to the imputation of improper motives. If either the State or the people have constitutional rights, it is a paramount duty to preserve them by all legitimate means. This Court, the State believes, to be the great tribunal for the peaceful settlement of all constitutional questions, and especially in "all cases in which a State is a party," as expressly provided in the fundamental law. In consideration of the premises, and inasmuch as complainant manifestly has no remedy whatever at law, as must be apparent to the Court, and can have redress, as a State, only through this Court, as provided by the Constitution, complainant appeals to the preventive power of this Honorable Court, exercising the jurisdiction of a Court of Equity, and humbly prays that the said ANDREW JOHNSON, and his officers and agents appointed for that purpose, and especially General E. O. C. Ord, above-named, be perpetually enjoined and restrained from executing or in any manner carrying out said acts, and that process of injunction and subpœna issue, directed to the parties aforesaid, and all other requisite process deemed necessary may be issued, and for such other and further relief as may be deemed proper by this Court, and that defendants be required to answer this Bill of Complaint.

And, as in duty bound, complainant will ever pray, &c., &c., &c.

W. L. SHARKEY,
R. J. WALKER,
Counsel for Complainant.

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United States Supreme Court.

APRIL TERM, 1867.

THE STATE OF MISSISSIPPI

vs.

ANDREW JOHNSON, President, &c., et al.

W. L. SHARKEY,
R. J. WALKER,
Counsel for Complainant.

Supreme Court of the United States.

THE STATE OF MISSISSIPPI

vs.

ANDREW JOHNSON, PRESIDENT, &c., ET AL.

This bill is filed to enjoin the execution of an act of Congress, entitled "An act to provide for the more efficient government of the rebel States," and also an act supplemental thereto. Although the questions arising in the case are of great magnitude, exceeding in importance any ever presented to this Court, yet they are few in number. This application is in behalf of one of the States of the Union to restrain the President of the United States, or any of his officers acting *colore officii*, from destroying a State, or exercising power over a State, or its people, forbidden by the Federal Constitution. The Constitution of the United States is declared therein to be "the Supreme law," and all laws of Congress or of a State repugnant thereto, when brought under judicial cognizance must be declared void. Such is the settled doctrine of this Court, and of all our judicial tribunals, State and national.

The first question is, Do the acts of Congress before referred to violate the Federal Constitution? Such was the opinion of the President of the United States, as expressed in his veto messages, and we shall but state the supposed points of conflict, without extended argument. The acts in question violate the compact with Georgia of 1802, the ordinance of 1787, made under the compact with Virginia, both of which compacts were extended to Mississippi, and, made "unalterable" and "final and conclusive" by Congress, and so accepted by the State. These acts annihilate a State, they

destroy the State constitution of Mississippi of 1817, accepted by Congress, as well as the amended State constitution of 1865, established by the people. If there was any fatal irregularity in the State constitution of 1865, which is denied, that would not territorialize the State or abolish the State constitution of 1817. These acts deprive the State of that representation in the two Houses of Congress constantly and forever secured by the Constitution. They substitute military rule for that of the civil law; they repeal the right of *habeas corpus* in time of peace; they deprive men of life, liberty, and property, without due process of law; they subject them to arrest without warrant founded on affidavit; they deprive them of the safeguard of a grand and petit jury. If all this may be rightfully done then these acts may be constitutional.

Second: The next question is, Are there proper parties to this suit as complainant and defendants? The Constitution declares that "the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority." And it also declares that "in all cases affecting ambassadors, other public ministers, and those in which a State is a party, the Supreme Court shall have original jurisdiction." This is a case in equity, and proper for the cognizance of a court of equity, as will be shown hereafter. It arises under the Constitution, and a State is party complainant. That a State may sue by original bill in the Supreme Court of the United States has been settled by this Court.

It is important, however, to consider whether the President of the United States can be made a party defendant to this bill, inasmuch as there is no precedent directly to the point. Yet it is believed the question has been virtually settled by very high authority. It is important, in this connection, to mark the distinction between what are called political powers and such as are ministerial. In the exercise of discretionary or political powers, courts will not undertake to control the action of officers; but not so with regard

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to ministerial duties, in the exercise of which no one is above the law, however exalted his position. Fortunately, we have neither a king nor an emperor nor a parliament who are omnipotent or above the Constitution.

Our Constitution declares that "the judicial power shall extend to all cases in law and equity arising under this Constitution," &c. And thus the judiciary are made the guardians and protectors of the Constitution.

The President is but the creature of the Constitution, one of the agencies created by it to carry it into practical operation; and it would be strange indeed, if he should be permitted to exert his agency in violating that instrument, and then claim exemption from the process of the court whose duty it is to guard it against abuses, because he is the chief executive officer of the Government, and especially when he is exerting a mere ministerial duty, for that is all he does exert in executing an act of Congress; he has no discretion in the matter. The Constitution makes no distinction as to parties. The case is the criterion, no matter who is plaintiff or who defendant; and if the President be exempt from the process of the law, he is above the law. On this point it would perhaps be sufficient to refer to the very elaborate and able decision of Chief Justice Marshall, delivered on the trial of Aaron Burr. An application was made for a subpœna *duces tecum*, to be directed to the President of the United States, and the application was resisted on the ground that the President was not amenable to the process of the Court, and could not be drawn from the discharge of his duties at the seat of Government, and made to attend the Court sitting at Richmond. The Chief Justice drew the distinction between the President and the king of England, and held that all officers in this country were subordinate to the law, and must obey its mandate, and therefore sustained the application. The subpœna *duces tecum* was only a command to the President to do a particular thing; the injunction is but a command to him not to do a particular thing under a void authority. The principle is the same in the two cases, as well as the means of coercing obedience; and the reasoning of

Chief Justice Marshall completely reaches and settles the question now before this Court. The Constitution provides that all officers may be impeached; but this does not exhonerate them from personal liability for acts done under color of office, the President as well as other officers. The whole question lies within a narrow compass. The Constitution is supreme, all officers are subordinate to the supreme law, and consequently subordinate to the command of that department whose duty it is to enforce subordination by declaring the meaning, the extent, and the limitations of the Constitution.

If the President be exempt, why not all his Cabinet officers? They all constitute but parts of the executive department of the Government. Yet in the case of Mabry *vs.* Madison, 1 Cranch, it was decided that the acts of the Secretary of State were the acts of the President, and that the Secretary might be subjected to the process of *mandamus*. Why would it not just as well lie against the President? It would be strange indeed, to hold that the subordinate is liable and may be sued for acts which are the acts of his principal, and yet that the principal is not liable and cannot be subjected to the process of law. Even more recently this Court has decided that officers of the executive department are liable to the process of the Court. (See Kendall *vs.* Stockton, 12 Peters, 524; United States *vs.* Guthrie, 17 Howard, 254.) The case of Ellis *vs.* Earl Gray, 6 Simons, 214, is a leading case in England, and has been approved in this Court. In that case it was decided that the Lords of the Treasury, constituting the prominent department of the executive governernment, might be enjoined by the judicial department. In that country the king is supposed to be above the law, and is the fountain of justice, yet his immediate subordinate departments are not above it. In this country the President is not above the law; it is above him, and hence he must be subject to its restraints.

The attention of the Court is also invited to the decision of Chief Justice Bartley in the case of the State of Ohio *ex rel.* of Whiteman *vs.* Salmon P. Chase, Governor, 5 Ohio

S. Rep., 529. The objection was raised that a *mandamus* would not lie against the Governor. In delivering the opinion the Chief Justice said: "Under our system of government, no officer is placed above the restraining authority of the law, which is truly said to be universal in its behests, all paying it homage, the least as feeling its care, and the greatest as not being exempt from its power." If the chief executive officer of a State is liable to be controlled by the courts of the State in the discharge of ministerial duties, for much stronger reasons is the chief executive officer of the United States liable to be controlled by this Court under the provisions of the Federal Constitution. (See also Hilliard on Injunctions, 374, and authorities cited.) In the case of Greene *vs.* Mumford, 5 R. I, the Court said in regard to officers: "If they are departing from the power which the law has vested in them, if they are assuming to themselves a power over property which the law does not give them, this Court no longer considers them as acting under their commission, but treats them as individuals." By the same principle the President, when acting in opposition to the Federal Constitution, may be treated as an individual.

Third: Does the bill present a case proper for the interposition of this Court? The Constitution gives to the Federal judiciary equity jurisdiction, and it is a familiar principle that wherever jurisdiction is given over a particular subject, or a particular branch of jurisprudence, it is ample for all purposes connected with the subject or the branch of jurisprudence. Therefore the jurisdiction of this Court is ample to take cognizance to the full extent, over all subjects of equity jurisdiction. We have then but to present such a case as equity would take cognizance of, and the relief will be granted to the utmost extent of the powers of a court of equity. The great distinction between remedies at law and in equity is this: a court of law gives redress or damages for injuries, and a court of equity will prevent their occurrence. The one can do nothing more than give compensation in damages, whilst the other will save the party from a resort to the remedy for damages, by preventing the

mischief. And even if there be a remedy at law which is inadequate, a court of equity will take jurisdiction. But in this case there is no remedy at law. It is a case in which equity alone can give relief. If there be no remedy then the Federal Constitution is not, as declared, the supreme law of the land, since a mere majority in Congress may exclude States, as it has done in this instance; it may blot out States and State constitutions and State governments, or it may assume and exercise the absolute power to govern them. If this may be done in the Southern States, it may just as well be done in other States, and the will of a majority in Congress is the supreme law in all cases whatsoever. The people of the States which framed the Federal Government surely did not think it possible that they were creating a power that could destroy their existence as States; and yet this has been done with four of the original States that created the Government.

This bill presents several grounds, on either of which a court of equity may rightfully take jurisdiction and give the relief sought.

In the first place, the acts under consideration violate the Constitution of the United States in so many particulars that it is not necessary further to attempt to enumerate them. It does more; it annuls and abrogates the State government and state constitutions, and substitutes a mere military power. The Constitution is of course the chief object of protection with all courts. When it is about to be violated, the Federal judiciary will interpose for its protection. Thus, in the case of Osborn *vs.* The Bank of the United States, 9 Wheaton, 738, the Federal Court took jurisdiction for the sole purpose of protecting a constitutional right. A State law violated the Constitution, and a State officer was about to execute the law, but was restrained by injunction by the Federal courts, which would not have had jurisdiction over the subject-matter or the officer but from the fact that the execution of the law would have violated the Constitution. The question then is settled, that wherever the Constitution is about to be violated and a proper case is presented, the

Federal judiciary will protect it; and wherever this Court has original jurisdiction it will certainly act upon the same principle. (Story's Equity, 34, 48, 110. Hilliard on Injunctions, 389; State of Pennsylvania *vs.* Wheeling Bridge, Howard Reports; Martin *vs.* Hunter, 1 Wheaton; Carrol *vs.* Safford, 3 How., 441; Cohen *vs.* Georgia, 6 Wheaton.)

A court of equity will always protect a franchise by restraining a threatened abuse. (2 Story's Equity, 766. Hilliard on Injunctions, 311.) Surely the constitution and the rights of a State, and of its people under it, stand upon much higher ground and have a stronger claim to protection than a mere franchise; to protect the one and not the other would be to protect the lesser and not the greater. This protection is always given in advance of the threatened injury. We ask the application of this principle in the present case. The bill makes a case in which the Constitution must be violated not only to the great prejudice of a State, but of individuals. Will the Court prevent this state of things, or will it leave the complainant without redress, and thus admit that the Constitution furnishes no means for its own protection? Pecuniary compensation never can be made, even if there were any persons against whom redress could be sought in a court of law. And the grievances resulting may never be redressed, for these bills leave it discretionary with Congress when the State government ordered to be established shall be recognized.

In the next place, the bill presents the case of a breach of agreement made with the State of Georgia, under the compact of 1802, and of Virginia, under the ordinance of 1787, as well as with the State of Mississippi on its admission into the Union. These compacts, which are made "unalterable" and "irrevocable," are public documents, and we merely refer to them. Courts of equity will always interpose, not only to enforce agreements or compacts, when that can be done on a proper case made, but also to prevent their violation. (Casey *vs.* Holmes, 10 Ala., 776.)

Again, the bill presents a patent case of irreparable mischief; and in such cases, it is needless to say to this Court,

equity will always interpose to prevent the mischief. On this point, the bill states all the facts, and from that statement it is manifest the mischief must ensue. Mississippi was admitted into the Union in 1817 under the compact made with Georgia. Her constitution was then declared to be republican by Congress, though, in reality, it was far less so, according to the present standard, than her present constitution. Under that government she continued until 1832, when the constitution was modified, without the consent of Congress, and without producing any change in her relations with the Federal Government. In 1861, a portion of her people undertook to break up these relations by an attempt to secede. The State was not annihilated or removed from her place in the Union by this attempt at secession, and the ordinance of secession was merely a nullity, as has always been maintained by all the departments of the Federal Government. When the attempt at secession proved abortive, the people of the State, through their representatives, assembled in convention and remodeled their constitution, by erasing from it all those provisions which had been illegally interpolated upon it to suit the Confederate Government. They did not form a new constitution; they did not act as a new State without a constitution; they did not recognize the attempt at secession as changing in any way their former State government. On the contrary, one of the first acts of the Convention was to declare, the ordinance of secession a nullity; and the constitution was so amended as to suit the changed condition of things, and the government was put in operation under it in October, 1865. Every department and office were filled by appropriate functionaries, and Senators and Representatives to Congress were elected. No matter how or by whose order that Convention was convened, since, when assembled, it represented the sovereign power of the people, and the right of a State to change or modify its constitution has never been questioned. The proclamation of the President imparted no power to the people which they did not already possess, nor can any plan of Congress do so, nor restrain their inherent right of

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sovereignty, except so far as it has been restrained by the Constitution of the United States.

With a government thus organized, perfectly republican in form, it must be manifest that all those mischiefs enumerated in the bill, and more, must ensue by superseding and annulling that government, and placing in its stead military rule over the State. In effect, these bills declare that the State has been without a government for years past, and they confer full authority on the military officer to protect all persons in their rights of person and property, to suppress insurrection and violence, to punish crimes, and to establish military tribunals; in short, the whole internal policy and the entire domestic concerns of the State are placed under his control; this too without any law to guide him but his own will, with a strong armed force to carry out his will. The legislation of the State and its judicial system are to be annulled, and the rights of property unsettled, even arbitrarily destroyed. If this state of things does not lead to a train of evils that defy enumeration, then the history of unbridled military power in all ages of the world will be belied. Wherever it has prevailed it has been the irresistible instrument of wrongs and outrages, and the power by which Governments have been subverted. Are men better now than they have been? They are in passions, in faculties, and in temper the same. At one time the kingdom of England was divided into military districts, with a general in command of each; and the historian informs us the people became sick and tired of government by the sword, and pined for a government of laws. And this is to be the fate of the southern people, perhaps, at no distant day, the fate of the whole people of the United States, if this system becomes a precedent in the Government. Already Maryland, a State that did not secede, has been threatened and forewarned that she too may soon be a victim; the sword hangs over her by a slender thread. And can it be that for such impending injuries there is no remedy? What an idle ceremony it was to declare that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States,

are reserved to the States respectively, or to the people," if Congress may convert the regular government of a State into a mere provisional government, why may it not just as well prescribe a permanent government for it? And does it not do so in this case, by regulating the right of suffrage, and by claiming the right to determine when the State shall be restored? What secession failed to accomplish, what the war was inaugurated to prevent, has been brought about by a very plain and simple process.

An additional source of probable mischief should not be overlooked. Suppose the officers appointed should proceed to carry out these acts to the full extent of their powers, by removing all the officers of the State, by adjudicating on the rights of property according to their own crude ideas of right, by trying and punishing individuals, by calling conventions and establishing governments, and by doing whatever a military officer may think proper to do, and then these acts should be declared void, as they surely will be, sooner or later, then all that may have been done under them must fall. It will follow, that a state of anarchy must have intervened from the time the government was displaced. And what may have been done can derive no validity from the real or supposed assent of the people; these measures are put upon them by force or under duress. No one can foresee the evils, the utter confusion, that must prevail. This consideration should present a persuasive reason for a speedy settlement of this question, so that the harmony and good order of society may not be broken up, and this humiliating spectacle presented to the world, to the reproach of American institutions.

May we be permitted to add another idea? These acts are harsh, oppressive in the extreme. They are acts of pains and penalties for past offenses; they are bills of attainder, *ex post facto* laws. This Government must have its strong foundation in public opinion, in the attachment of the people for it, in the protection it affords them in the enjoyment of civil and religious liberty. Is it wise, is it politic further to oppress, to punish a helpless people who have already drank of

the cup of bitterness to its very dregs for their errors? Is it expected thus to win back their affections for the Government of their fathers? Is it expected that an oppressed people will love the Government that oppresses them, that condemns them unheard, unrepresented? Does Ireland love England, or will she ever do so, after having been so long enslaved by military rule and parliamentary oppression? We, too, may be laying the foundation for similar resentments between the South and the North, to culminate in future revolutions, and possibly in the utter overthrow of the Government.

Fourth. As this legislation must have proceeded on the idea that the southern States are not members of the Union, let us, in the last place, inquire whether they were in the Union during the rebellion, have been in ever since, and are so now. If they have continued to be and are so now, then, surely, these acts have no constitutional basis.

The union of the States under the Articles of Confederation of 1778, as well as under the Constitution, was "a perpetual Union," and could not be dissolved by act of Congress, or the attempted withdrawal of any portion of the people of a State. If Congress cannot dissolve the Union, it cannot exclude any State from the Union, for, if it may exclude one State, it may exclude any number of States, and thus accomplish a result forbidden by the Constitution. The secession ordinances, so far as their legal effect was concerned, were mere nullities. These ordinances were nullities when enacted, and they acquired no legal or constitutional force by subsequent events. The assemblages which enacted these ordinances had no more legal or constitutional power than popular meetings. They were not only illegal, but insurrectionary. The State constitutions, framed under these ordinances, were nullities also, because the Federal Constitution expressly declares, in imperative language, that "this Constitution shall be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding." The secession ordinances being nullities, the subsequent State constitutions based upon them were nullities, because the constitutions of all the States

are required, as we have seen, to be *always subordinate to the Federal Constitution.* The subsequent so-called Legislatures, and Governors, and all other officers, civil and military, acting under these insurrectionary proceedings, whether at Montgomery, Richmond, the State capitals, or elsewhere, had no legal or constitutional authority, not only for the above reasons, but also because they were *all* required first to take *an oath to support the Constitution of the United States.* In fact, the whole proceedings, commencing with the secession ordinances, down to the last act of the drama, were part and parcel of a great insurrection, wholly illegal, and totally forbidden by the Constitution. But surely an unsuccessful insurrection in any State, although it might subject the individuals concerned to punishment, could not force any State from the Union, confer any such power on Congress, or affect, in any way, the Federal relations of the State.

Although Congress can suppress insurrection, whether of a minority or majority of the people in any State, yet it cannot declare war against a State, or treat it as a foreign Power, or coerce, or punish a State in its corporate capacity. Such a power, as shown by the Madison Papers, recording the proceedings of the Convention which framed the Federal Constitution, was then asked from that Convention and expressly refused. The principal reasons for this refusal were:

First. Because, (unlike the Confederation of 1778,) the Constitution acted only on individuals, and not upon States.

Second. Because the power to suppress insurrection in any State, and punish the individuals concerned, was sufficient.

And third. The Convention would not grant power to Congress to declare war against a State or punish a State, or inflict any pains, penalties, or forfeitures upon it, because, such an authority would carry with it the power to expel a State indefinitely from the Union, or to treat it as a conquered foreign province. The Union of all the States under the Constitution was intended to be indissoluble, either by State or Federal authority. We know, that the refusal of the Convention which framed the Constitution to grant to

Congress the power to make war upon a State, or to coerce a State in its corporate capacity, has been most erroneously cited as justifying the resistance in the South to the armies of the Union; but those armies, as expressly declared by Congress, did not march to destroy States, but, under the power granted by the Constitution, "to execute the laws of the Union and suppress insurrections;" nor could the performance of these duties by the Federal Government be arrested by any State law or ordinance whatsoever. Indeed, not only did Congress never declare war, but it commenced (before Congress was convened) under the proclamation of President Lincoln to suppress an in insurrection, and was so continued by Congress throughout the conflict. Similar views were set forth by President Jackson, after the secession ordinance of South Carolina, in his great proclamation of 1832, carried out by the force bill of that date, and by the army and navy under the command of Scott and Elliot at Charleston. Such were the views expressed by Daniel Webster in his incomparable speeches of that date; such were the opinions of Henry Clay, Martin Van Buren, and all the Union patriots of that date; such was the action of Congress in suppressing the whiskey insurrection of 1798, and the Olmstead revolt of 1807, although sanctioned by the Legislature and Governor of Pennsylvania; such the action of the Government in suppressing the South Carolina secession of 1832; such was the action of Congress and of President Lincoln throughout the recent rebellion, and such has been the uniform opinion of this Court. Congress never did declare war against a State, or attempt to punish a State, or exercise any such power, unless indeed its recent action within the last few weeks may be regarded as the exertion of such a power. If the people, whether few or many, a majority or a minority, by secession or otherwise, attempted by force to destroy the Government, or dissolve the Union, it was a case of insurrection, to suppress which, by its whole military power, was the right and duty of the Government. Throughout the rebellion, the Constitution remained in full force in the State; so did its then existing State constitu-

tion and State laws framed under and in subordination to the Federal Constitution. Those former State constitutions and State laws remained binding and in full force throughout the rebellion, and they are in force now, except so far as changed since the suppression of the insurrection by the people of the State acting in subordination to the Federal Constitution, or by amendments to it. An unsuccessful rebellion does not withdraw a State from the Union, deprive the State of any of its rights, or repeal the State constitution; nor does it authorize Congress to change that instrument, or to frame, or dictate, in whole or in part, any new constitution. Congress cannot change the terms, (established by the Federal Constitution,) under which a State is entitled to representation in the Senate and House of Representatives; it cannot prescribe any new conditions, much less can it say, that, unless a State shall regulate the right of suffrage according to the will of Congress, it shall be forever excluded from the Union. Four of the States over whom this power is attempted to be exercised, are among the States which framed the Constitution. Others of these States were admitted under "unalterable" and "irrevocable" compacts, made "binding and conclusive" on this Government, by which they were *forever* to enjoy, as States, all the rights stipulated by those compacts, and to be admitted as they were into the Union, "on the same footing with the original States in all respects whatsoever." Is this true, if Massachusetts and New York may regulate the right of suffrage now and in all time hereafter within their limits at their pleasure, but Virginia and Mississippi cannot do so? Is a State, even if readmitted, in which Congress regulates or dictates the right of suffrage, and exercises other powers, not delegated by the Constitution, in truth a State; or is it not merely a subordinate province, and in fact, and in contemplation of the Constitution, not a State of the Union? Certainly it is not, as required, a State "on the same footing with the original States in all respects whatsoever." If there was anything clearly required by the Constitution, it was the *uniformity* of its operation in *all the States*. Con-

gress cannot discriminate among States in the exercise of its constitutional powers. It cannot say one State shall regulate within its limits the right of suffrage, and not another. It cannot say a certain class shall vote now and forever in one State, but may remain excluded in another.

If Congress may discriminate among States on a question so vital as the right of suffrage, it may thus discriminate in all cases whatsoever, yielding to certain States all their rights under the Constitution, and depriving other States of all or most of such rights, leaving them States in name only. A State cannot rebel, it cannot commit treason or any other crime. A State cannot be a traitor, nor can it be tried or punished as such, or subjected to any penalties or forfeitures. But the citizens of a State, whether few or many, whether a minority or a majority, may commit treason; and those who have committed treason, and those only, in any State, North or South, may, on conviction in the mode prescribed by the Constitution, be punished as traitors. But those of any State North or South who were true and loyal cannot be punished, much less can they be degraded from citizens of a State to citizens of a Territory, expelled from the Union, taxed without representation, deprived of the right of trial by jury, of all the rights secured by the Constitution, and subjected to military rule. This would be to confound the innocent with the guilty, would be contrary to the Constitution, and repugnant to every principle of law and justice. Suppressing a rebellion in a State, is wholly unlike a foreign war, and the results are entirely dissimilar. In the latter, the whole people, (including even our friends,) are by the law of nations public enemies, and may be treated as such, because they owe allegiance to their own Government. But here the whole people of every State owe paramount allegiance to the Federal Government. Hence, the loyal men are not, nor can they be treated as public enemies; and a contrary doctrine would be equally unconstitutional, unwise, and unjust. Throughout this conflict, the contest, has been uniformly conducted by Congress, not as making war on a State, or conquering a State, but only as the suppression of a rebellion.

The so-called rebellious States have been constantly regarded as States of the Union. They were so unanimously declared by Congress after the secession ordinances and insurrection and repeated conflicts of arms, and the idea of conquest, or subjugation, or expulsion from the Union, distinctly repudiated. Representatives in the Senate and in the House from these States, and after these events, were still admitted without question; representation in Congress was assigned to them under the last census; direct taxes were apportioned among them as States, and have been collected; district and Supreme Court Judges assigned to them as States, and other officials; the action of State Legislatures, long after the rebellion, still recognized, and especially in the assent of the Legislature of the State of Virginia to the creation within its limits of the State of West Virginia. Amendments of the Constitution of the United States have been submitted to their State Legislatures organized under their recent constitutions, and, in one case at least, the action of such Legislatures distinctly recognized by Congress, and their cases heard and determined, as cases from States, by this Court. It is thus that Congress, as well as this tribunal, is distinctly committed to their recognition as States of the Union. Even in the acts objected to in this bill, they are called "*States*," but "rebel States," as if a State could rebel in its corporate capacity. If so, who represented such States as States in such acts of rebellion? Not the conventions which framed the secession ordinances, for they were mere insurrectionary popular assemblages, having no legal or constitutional power whatever. The so-called State Legislatures were, we have seen, in the same condition; and, as to the so-called Confederate Congress, it was regarded as a mere insurrectionary and treasonable assemblage. Indeed, we constantly refused to recognize them even as belligerents, and uniformly protested against their acknowledgement as such by any foreign Power. These views we have not only enforced at home, but by judicial proceedings abroad, since the close of the rebellion. But if this was a war against States as such, subject to the rules of conquest which regulate foreign war; if the insur-

gents really were belligerents, and all their people public enemies; if all this was so, why do we object that England acknowledged them as belligerents, and on what principle do we claim damages for the depredations of the Alabama and other rebel cruisers? Above all, if this was a war against States as such, their whole people "public enemies," and they are now conquered provinces, by what principle, acting upon the doctrine of war and conquest and seizure of their persons and property, do we repudiate their debts, now amounting to billions of dollars? Upon the suppression of an insurrection, the lawful government is not liable for the debts incurred by the insurgents; but, it is a well settled principle of international law, that, in case of a war upon *States as States*, and their conquest, the conquering power, taking possession of such States, is liable for all their debts. In this case, the President of the United States, exercising the power conferred upon him by the Constitution and the laws, has long since, and long before the passage of these acts, recognized peace as fully existing in every part of the Union, and, for nearly two years, not a soldier or citizen has been arrayed against the Government. There has been, not only actual peace for nearly two years, but it has long since been fully recognized by the President, acting under the authority of the Constitution and the laws. Congress does not recognize any war or rebellion as now pending; on the contrary, in its most recent enactment, it speaks of "the States lately in rebellion." This is a conclusive admission by Congress, and fully confirms the President's proclamation. It cannot be pretended, then, that there is any war now going on, or any rebellion now pending. We are, so far as the rights of the States or citizens are concerned, in a condition of profound peace. As there is no war or rebellion, martial law cannot be proclaimed, or the *habeas corpus* suspended, or the right of trial by jury refused, or warrants issued without affidavit, or life, liberty and property taken without due process of law, or States reduced to territorial pupilage. The power to coerce a State, or to declare war against a State, we have seen, was distinctly refused by the framers of the Constitution; nor has Congress ever asserted or exercised such a power. If it exists, each State holds its place

in the Union, its power of local self-government, its right to a certain number of Representatives in Congress, its perpetual right, (of which it cannot be deprived even by an amendment to the Constitution,) to equal representation in the Senate of the United States. But, according to the present doctrine, each State holds all these rights, not under the guarantee of the Constitution, but by the feeble and precarious tenure of the will of Congress, and acts of Congress are "the supreme law," and not the Constitution. Had it been supposed that Congress at its pleasure could exclude a State from the Union, the Constitution would never have been ratified by any of the States. Who believes that New York, or Pennsylvania, or Virginia, or Massachusetts supposed that Congress might at its pleasure exclude them from the Union, and subject them as Territories to military rule? And, if this power to exclude States from the Union existed when the Constitution was framed, how are they to be readmitted? If the States which framed the Constitution could be excluded from the Union, how were they ever to get back?

The only provision on this subject is to be found in the first clause of the third section, fourth article of the Constitution, "New States may be admitted by the Congress into this Union," &c. There is no provision for the *readmission* of any State that had once been a State of the Union. The words are "*new States;*" but were New York, Virginia, Massachusetts, new States, or would the term "admitted" apply to any State that once had been in the Union? These terms, "new States," and "admitted," clearly apply to the introduction of States that never had been in the Union. Two or more States might by *their consent* and that of Congress be admitted into the Union as one State, but this is by express provision on the subject. On looking into the Articles of Confederation of 1778, providing for the admission of Canada and other British Colonies as new States of the Union, and on examining the ordinance of 1787, providing for the admission of five new States out of the Northwest Territory, we see what was the meaning of the words "new States." This is further illustrated in

the Madison Papers, recording the proceedings of the Convention which framed the Federal Constitution. It is there shown, that, when this clause for the admission of new States was pending, it was moved to confine it to our then existing territory, and that this limitation was refused, thus leaving Congress free to admit new States out of territory that had never before belonged to the Union. This is further shown to be the true meaning of this provision in the great letter of Alexander Hamilton, of 1797, looking to the acquisition of Florida, Louisiana, Mexico, and ultimately all Spanish America. Here the terms *admission* and NEW STATES find their whole operation, and can have no possible application to the old States, that framed the Constitution, nor to any State once a member of the Union. The ordinance for the government of the Northwest Territory, by which five new States were to be admitted out of it into the Union, was adopted by the old Congress, on the 13th of July 1787, which Congress was in session at the same time and place with the Convention which framed the Constitution, and was composed in part of the same members. Here, then, also, we see what was meant by the terms "new States." The States to be admitted out of the Northwest Territory would be "new States," such as Ohio, &c.; as also would be States admitted out of newly acquired territory, such as Louisiana, Florida, Texas, California, &c.; and such has been the legislative, judicial, and constitutional, as well as the popular meaning of the terms "new States" ever since they were used in the Constitution. When the States already in the Union, which framed the Constitution, were providing for the future admission of *new States*, these terms certainly did not apply to such old States. There is then no provision for the admission of old States, or the readmission of any State into the Union. And why was this? Because the Union was regarded as perpetual and indissoluble. No power was given to any State to withdraw from the Union, nor to Congress to exclude any State from the Union, and therefore no authority was given for the readmission of any State into the Union. Congress now attempts to exclude ten States from the Union, yet, as

shown in the fifth article, providing for the amendment of the Constitution, this power is expressly withheld from even two-thirds of Congress sustained by three-fourths of the States, by the emphatic declaration, in that article, "that no State, without its consent, shall be deprived of its equal suffrage in the Senate." Our constitutional history shows that, in the absence of this emphatic clause securing forever the right of equal, constant representation of each State in the Senate, the Constitution never would have been adopted. Yet this power, so clearly withheld from Congress, and even from the power to amend the Constitution, can, by the new doctrine, be exercised by a bare majority of Congress at its pleasure. If Congress may declare war against a State, and thus indefinitely exclude it from the Union, it is, of course, the sole judge of the necessity of the war, and may thus disfranchise or territorialize a State, or dictate the terms of readmission. So, if Congress, under the authority to suppress an insurrection in a State, may, as a punishment of the State for the void act of some of its citizens, exclude it forever from the Union, the object forbidden by the Constitution is accomplished. A new and most alarming doctrine has lately been announced; that Congress is the supreme power, that the President and the judiciary are subordinate to Congress, and that they are the sole judges in the last resort of the Constitution. According to this doctrine, the Constitution should have been composed of one short sentence. *Be it ordained, that all acts of Congress are the supreme law of the land, from which there is no appeal whatever.* It is true that the Constitution, in its first article, declares that "all legislative power herein granted shall be vested in a Congress," &c. Congress then possesses only the "legislative power," not the executive or judicial power, and only the legislative power "*herein granted.*" It is true that the tenth article of the Constitution confines Congress to the exercise of the *delegated powers.* It is true that the same instrument declares, in the sixth article, that "this Constitution, and the laws of the United States which shall be made in pursuance thereof," "shall be the supreme law of the land." The Con-

stitution is supreme; so also are the laws made "*in pursuance thereof;*" but, laws repugnant to the Constitution must then yield to the supreme law, and such has been the doctrine uniformly and unanimously held by this Court. But who is to decide whether acts of Congress are repugnant to the Constitution?

The decision rests, not in Congress, for it possesses only "legislative," and not judicial power. Is there then no tribunal for the peaceful settlement of disputed questions of constitutional law? Can there be no uniform operation of the Constitution throughout the Union? Must anarchy govern, or is the sword to be the umpire? The third article of the Constitution, organizing the judicial, as a department distinct from and independent of Congress and the President, expressly declares that "the judicial power of the United States shall be vested in one Supreme Court," &c.; it "shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States," &c.; "to controversies to which the United States may be a party," &c.; and then it declares that "*in all cases*" "in which a *State* shall be a party, the Supreme Court *shall have* original jurisdiction." Can any language be more explicit than this? It is comprehensive—"*all cases.*" It is imperative—"*shall extend,*" and such has ever been the settled doctrine of this Court. But, if the judicial department of the Government is to be overthrown and Congress to be inaugurated as the supreme uncontrolled authority, then each State holds all its rights, and every citizen all his rights of life, liberty, and property, by the feeble tenure of the legislative will. You hold the bonds of the Government, but, by the new doctrine, Congress may deprive you of them by taxation or otherwise, and there is no appeal or redress. You hold real estate, and deem yourself secure. Vain delusion! Congress, by an omnipotent power, may take it from you. You have the right to vote; Congress may deprive you of it. You are entitled to trial by jury, and your life liberty and property can only be taken from you by due process of law. Are you dreaming? Congress may sweep

all these away, and subject you, in time of profound peace, to military rule, and try you for offenses unknown to the law. What would property be worth if held by the mere tenure of the legislative will, subject to the biennial decision of the ballot-box? The annihilation of the judiciary; the overthrow of the Constitution; what a catastrophe! Already the Government is rocking on its base, and if it should not be now firmly upheld, as always heretofore, by this Court, we will all soon look upon the broken columns, and walk amid the mouldering ruins of the Constitution. The destruction of the Constitution! Why, it is the destruction of the Union, and the Government; for it is the Constitution which made and sustains the Government and the Union. May this great tribunal, raised above all transient passions and sectional prejudice, now, as always heretofore, save us from this dread catastrophe! This is emphatically a *bill of peace*, to prevent multiplicity of suits, and settle finally and peacefully controversies that otherwise would be endless, and fraught with extreme peril; and this alone, as shown by the preceding authorities, is a sufficient ground for equity jurisdiction.

W. L. SHARKEY,
R. J. WALKER,
Counsel for Complainant.

In the Supreme Court of the United States.

No. 13, Original Docket. December Term, A. D. 1866.

The State of Mississippi, Complainant,

VERSUS

Andrew Johnson, President, and others, Defendants.

Argument of A. H. Garland, Associate Counsel for Claimant.

Supreme Court of the United States.

No. 13, Original Docket. December Term, A. D. 1866.

THE STATE OF MISSISSIPPI, Complainant,

vs.

ANDREW JOHNSON, PRESIDENT; AND OTHERS, Defendants.

Argument of A. H. Garland, Associate Counsel for Complainant.

ARGUMENT.

As associate counsel in this case with Messrs. Sharkey and Walker, I beg leave to submit to the Court my views on this important controversy, with no hope of increasing the force of what they have so well said, or of adding to the strength of the case already made impregnable by them, but to discharge a duty to a client in a cause truly *vital to her;* and my reflections shall be as briefly stated as the nature of the case will permit.

Motion for Leave to File the Bill.

As far as I have been able to ascertain, there seems to be no *rule* of Court requiring this motion to be made; but it appears to have been the custom, in the practice in this Court, to move for leave to file such a bill or any application in the name of a State. It is probable that such a practice was adopted, inasmuch as the clerk of this Court could not issue any *original* process without an order of the Court, or, in

other words, the clerk's office is not at all times open for the filing of suits which, by their very filing, carry the process with them, as in other courts, and of subordinate or inferior jurisdiction. (Curtis's Commentaries on United States Courts, 154, note 3.) This custom, however, as I am persuaded, is only a mere matter of form, and has never been considered as presenting a question for debate or for contest. The permission to file the bill is always given, and whether there is any jurisdiction in the Court to take cognizance of the bill is another and after consideration, to be presented in a different manner than by objecting to the filing of the bill. The very announcement that the *State of Mississippi* is a party, carries the right to file the bill, as the Constitution (Art. 3, Secs. 1 and 2) confers original jurisdiction on this Court in *all cases in which a State shall be a party*. The State of Mississippi is here a party, and this is sufficient to let her into the Court; but whether she is in properly, or whether she has impleaded a proper party, or whether she shows a case for relief, are all questions that would arise after the filing of the bill by proper pleadings interposed. And I take it for granted, in truth, such is the effect of the objection made by the *Attorney General* to the filing of the bill, and will proceed to consider the case as if the bill had been filed, and these various questions were raised by plea, demurrer, or otherwise. This is the more reasonable, too, because in all applications for injunctions, after notice and before answer, the Court considers the case made, just precisely as if the defendant appeared and demurred to the bill. (Lubé's Eq. Pls., 72, *et seq.*)

Party Complainant.

According to the provision of the Constitution already cited, the State of Mississippi is properly before the Court. The language is broad, and covers every conceivable case in which a State could be a party. She is presented here to the Court in exactly the same manner that all other States have been in suits brought by them in this Court. She shows how and when she was made a State, and exhibits with her

bill full evidences of the facts, and nothing more could be done to complete this branch of the case, and a very cursory examination of the authorities on this point will satisfy the Court of this: Conkling Tr. (4th ed.) 14, 15, 16; Laws Tr. 12–98, note 1; Curtis's Com., (on U. S. Courts,) 144, 145, and 153–155; 1 Kent's Com. 359.

Party Defendant.

By the very authorities cited as to the party complainant, it is very certain that the defendants to this bill are proper parties. No exception whatever is made in the Constitution, and the act of 1789 uses the language *exclusive jurisdiction* in all controversies of a civil nature where a State *is a party*. The Constitution making no exception, and the judiciary act making none, it is a familiar principle of law that the courts can make none. The Court takes the law as it is, and it must be regarded as settled by this Court, that the Constitution and the act of 1789 mean just what they say, and leave no room for the Court to diminish or circumscribe this jurisdiction. If a State is "either *nominally* or *substantially* a party," the case is made. Fowler *vs.* Miller, 3 Dall., 5 Cranch, 115; New Jersey *vs.* New York, 5 Pet., 284; Georgia *vs.* Brailsford, 3 Dall.; 1 2 *ib.*, 419; Rhode Island *vs.* Massachusetts, 12 Peters, 657; Cherokee Nation *vs.* Georgia, 5 Peters, 1. It has been held for a long time that the two sections of *article three* of the Constitution, noticed heretofore, contained a full and complete vesting of the judicial power of the United States. (Martin *vs.* Hunter, 1 Wheat., 304; and Coheers *vs.* Virginia, 6 Wheat., 264.) And if this be true, there can be no doubt that a party defendant must be brought in; and the Court would not lose its jurisdiction because there was no established mode of proceeding, or because it had no name to give its writ or process; it will create a mode, and make and name the process too, to enforce its jurisdiction. The reasoning of this Court in Florida *vs.* Georgia, 17 How., 478, supports this position. Objection may be made that this is a suit against the United States; but the United States are not a party to the suit. It is a sad error to confound the

mere *Executive* of the United States with the United States, and it is equally unwise to call any one branch of this Government the Government itself. The *President*, who is a defendant to this bill, is but the *Executive*—created, named and styled, and empowered to act only by the Constitution, the very instrument that created this Court, and created Congress, and allotted to each its respective spheres and marked out to each its respective duties. Despots or monarchs may call themselves Governments and "*revolutions*" too, but in this country our Constitution is our Government, and the President is to see the laws executed made in accordance with that instrument. He is no more above it than any individual. It may be a novel proceeding to seek to enjoin him by this Court, but novelties are of the fortunes of the law, and it would be a dry, uninteresting and unprofitable profession indeed, if it did not give rise to novelties. But the novelty of the proceeding does not affect its soundness. Judge Marshall, in Burr's trial, gave some wholesome views on this subject which this Court will remember; and more recent authorities sustain him in all he said. To these I wish to call the attention of the Court.

In vol. 3 Opin. Att'y Genl., 471, (Mr. Grundy,) it was said the President could not be enjoined from paying money over to certain parties under a treaty stipulation, because the treaty had concluded the whole matter, and the President could not be held thus as a stake-holder or garnishee for litigants. So Mr. Lagare (*ib.*, 667) held, and for the same reasons, but admits that the President can be enjoined as to acts merely ministerial, and refers to the opinion of Mr. Wirt, (1 *ib.*, 681,) and he refers also to Kendall's case, 12 Peters, 524, and Decatur's case, 14 *ib.*, 497. In Kendall's case, it is expressly ruled that the executive department can be reached by appropriate process in the performance of ministerial acts, and all the Court then said was afterwards reiterated in Decatur's case, sup.; and these cases must be held conclusive on this point. In Brashear *vs.* Mason, 6 Howard, 101–2, Judge Nelson sustained Decatur's case and Kendall's, and drew the distinction between those acts

purely ministerial and those involving the exercise of judgment and discretion, and recognized the doctrine that as merely the Executive, exercising no discretion or judgment in the ordinary discharge of his duties, the officer could be reached by process of the Court. So Judge Woodbury held in Reeside *vs.* Walker, 11 How., 272; and still more recently, Judge Daniel, in United States *vs.* Guthrie, 17 How., 304, held the same doctrine; and see especially Marbury *vs.* Madison, 1 Cranch, 137, and the comments thereon in Curtis's Com., sup., 108, 9, 10, 13, and 159. In the present case there is nothing left for the President to do, (to find no law or fact) but to proceed as an agent, with no discretion or judgment to be exercised, in the legal acceptation of these terms, to enforce this law, and most clearly the power of the Court extends to just such acts. The bill, called the reconstruction act, dismantles the States, strips them of every remnant of sovereignties as States, and simply leaves it to the President to assign commanders to the districts, and to detail a sufficient force to enable the commanders to perform their duties—no option, no discretion, no exercise of judgment being left the President. It would be very difficult to find an act more ministerial in its character than this to be performed by the President.

The objection is that the President is to be enjoined. Is it not a fact that whenever any subordinate of the Executive is enjoined, he himself is? Our Constitution knows but one Executive, and his agents all over the country act for him and under his instructions. A Cabinet officer is enjoined, is reached by mandamus, yet it is the President after all, for every official act in the executive branch of the Government must be performed as that of the President. The Cabinet, even, has no constitutional existence as a directory body, or one that can decide anything; the theory of our Government is that what belongs to the executive power is to be exercised by the will of the President, and when General Ord acts, under the late measure of Congress, in law, the President acts; 2 Curtis's Hist. Const., 409; Jefferson's Works, vol. 5, 94, 568–9. The President was

made Commander-in-Chief of the Army and Navy because this is the application of force to execute law, maintain peace, &c., and these are considered attributes of executive power, and have been so regarded by all well-organized Governments on earth, (1 Kent, 305–6.) So, instead of proceeding against all the various officers who are to act in the different districts, why not at once strike at the very source of this power, and by one suit put an end to it altogether? When a revenue officer, tax collector, or other executive officer of the United States is enjoined, really the President is enjoined. Then, to prevent a multiplicity of suits, accumulation of costs, delay, and vexation, as well as irreparable mischief, by one suit this Court is asked to put an end to the whole proceeding. Upon these grounds the courts interfere to prevent collection of taxes; McGehee *vs.* Mathis, (from Arkansas,) decided by Chief Justice Chase at this term; 1 Eden on Injunction, (by Waterman,) 11, *et seq.;* Hilliard on Injunction, 25, 316, 383, 525, 539, 541; *ib* 270; Osborne *vs.* Bank United States, 9 Wheat., 738; and the great merit of this application is that it seeks to prevent mischief and not to remedy it; and this has been aptly termed "the noblest exercise of power that can engage the attention of any tribunal."

Then, upon the question of parties there can be no cavil, and the original jurisdiction of this Court depends upon the character of the parties to the suit, and not the character of the case, as the appellate jurisdiction does; Cohens *vs.* Mirginia; 6 Wheat., 264; Laws Tr., 12.

Political question, and not subject to review by the courts.

It is claimed that because Congress passed the reconstruction act as a political question, this action is final and the door is now closed against the courts. This may be so, and if it is, it is well for all parties to be informed of it; but until this Court shall solemnly declare it, I shall doubt and deny the doctrine. The first answer to it is, it is not true; and the second is, Congress and all the departments of the Government are concluded by previous recognition of those

States as such. Some confusion has arisen on this subject by attempting to establish the doctrine that Congress is the judge of what government is the proper one, and Luther *vs.* Borden, 7 How., 1, is called in to support this view. This case decides in so many words this: "In the case of foreign nations, the government acknowledged by the President is always recognized in the courts of justice, and this principle has been applied by the act of Congress to the sovereign States of the Union." But in the case before us Congress seems to act, and not the President. Besides, in the Rhode Island controversy, there was a contest between two different governments for recognition; but here the question is, can Congress unmake States and convert them into Territories, colonies, provinces, or military camps? Quite a different case from the Rhode Island controversy! If a State cannot appeal to the courts to stay proceedings by which she is to be destroyed and annihilated by act of Congress, of what benefit is it that she may sue at all in this Court? She might sue to save herself a few miles of territory, or a few thousand dollars, but she cannot sue to preserve her existence! In this connection, I beg leave to cite some authorities: 2 Curtis's History Constitution, (title, Purposes of the Judicial Power,) p. 430, it is said, "The just and successful operation of the Constitution, therefore, required that, by some comprehensive provision, *all* judicial cases arising under the Constitution, *laws*, or treaties of the United States, whether the question should grow out of the action of a State Legislature *or the action of any department of the General Government*, should be brought within the cognizance of the national judiciary. This provision was added by the Convention—it computed the due proportions and efficiency of this branch of the judicial power."

Ib. 434—On the one hand the judicial department is to see that the legislative authority *of the Union* does not exact of individuals duties which are not within its prescribed powers, and that *no department of the General Government* encroaches upon the rights of any other, OR UPON THE RIGHTS OF THE STATES. "All this may be, and constantly is involved, in judicial inquiries into the rights, powers, functions, and duties of

private citizens or *public officers;* and therefore, in order that the judicial power should be able effectually to discharge its functions, it must possess authority for the purpose of the adjudication, to declare even an act of legislation void which conflicts with *any* provision of the Constitution." And every word said here is supported in full by Mr. Madison, in several of his writings: 4 vol. Letters and other Writings of Madison, pp. 19, 43, 47, 48, 49, 62, 63, 75, 76, 100, 101, 222; and Nos. 39 and 78 of the *Federalist*, are directly applicable to this very question.

Now, who but a State can ask relief *against the "encroachments of any department of the General Government upon her rights,"* if her privilege or right to be a party to a suit in this court is worth anything? By way of illustration: On the western boundary of Arkansas there is yet a dispute as to the exact line of division; suppose, by way of a *political question*, Congress should undertake, by solemn act to say the true boundary should extend to the Missouri line, and thus throw all of Arkansas into the Indian Nation, might not Arkansas proceed by suit to enjoin the execution of this law? She might proceed to enjoin the execution of the law and prevent some thirty miles of her territory from being taken from her, but she cannot sue to retain all her territory. This is remarkable, to say the least of it. Such cannot be the law in this country.

In Rhode Island *vs.* Massachusetts, 12 Peters, 657, it was decided that the Supreme Court had jurisdiction not only to ascertain and establish boundaries between two States, but *to restore and confirm rights of sovereignty and jurisdiction;* and the very compacts and ordinances set out in the bill of complaint here, as affected by this legislation of Congress, are matters of judicial cognizance under this decision. (Poole *vs.* Fleger, 11 Pet., 185; Cherokee Nation *vs.* Georgia, 5 Peters, 1; Wheeling Bridge case, 18 How., 421. The State of Mississippi claims to be yet a State, with all her rights and privileges as such, and produces certain acts and compacts, which she claims Congress could not override or cancel; that this act of Congress impairs contracts before entered into, and divests rights already vested. The Constitution nowhere gives this power to Congress, and if Congress

claims it, who but this Court can decide? Does not this make a case for judicial action? Is it not *a case, a suit*, coming within that clear and precise definition of *a suit*, laid down by Judge Davis in the Milligan case? These are the very questions, of all others, in importance and magnitude for this Court to determine, and compared with these, all others are trifling. If Congress should conclude that there is now no proper government in the State of New York, and set it aside and place New York under another, can it be possible there is no power in this Court to examine into the matter, and see if Congress has done what the Constitution authorized it do, and to put an end to the evil, if the act is not valid? Surely there is something quite new under the sun, if this be true! Some writer said the British Parliament could do anything except make a woman a man and a man a woman, and if Congress can strike down whole States, and deprive millions of people of rights claimed to be guarantied to them by the supreme law of the land, without inquiry or hindrance by the judiciary, the British Parliament was, and is, a mere circumstance compared with Congress.

This case arises directly under the Constitution and laws of the United States, and under nothing else, and comes, therefore, within that section of the Constitution which vests jurisdiction over "*all cases.*" (Section 2, Article 3, Constitution.) It was contended by many, that because Congress, under its "*war-making power*," provided for courts martial, and military commissions, that this Court could not examine into Milligan's case, but was concluded because Congress, as a political question, had determined these were important instruments in prosecuting the war, and in bringing it to a successful close. But this Court did not so think, but in a decision which will be read and admired as long as love for free constitutional Government exists, examined into these questions, and denied this power to Congress, and vindicated the Constitution once more. With much more propriety can that be termed a political question under that broad grant of power to Congress to declare war, than this

private citizens or *public officers;* and therefore, in order that the judicial power should be able effectually to discharge its functions, it must possess authority for the purpose of the adjudication, to declare even an act of legislation void which conflicts with *any* provision of the Constitution." And every word said here is supported in full by Mr. Madison, in several of his writings: 4 vol. Letters and other Writings of Madison, pp. 19, 43, 47, 48, 49, 62, 63, 75, 76, 100, 101, 222; and Nos. 39 and 78 of the *Federalist*, are directly applicable to this very question.

Now, who but a State can ask relief *against the "encroachments of any department of the General Government upon her rights,"* if her privilege or right to be a party to a suit in this court is worth anything? By way of illustration: On the western boundary of Arkansas there is yet a dispute as to the exact line of division; suppose, by way of a *political question*, Congress should undertake, by solemn act to say the true boundary should extend to the Missouri line, and thus throw all of Arkansas into the Indian Nation, might not Arkansas proceed by suit to enjoin the execution of this law? She might proceed to enjoin the execution of the law and prevent some thirty miles of her territory from being taken from her, but she cannot sue to retain all her territory. This is remarkable, to say the least of it. Such cannot be the law in this country.

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can. The true rule is this: there is no power to prevent Congress from passing any law it pleases; but when it is passed, its effect on the rights of persons or of States is a question for this Court to decide under and upon the provisions of the Constitution. Suppose Congress should undertake to say that Kentucky had violated some of the terms and conditions upon which she came into the Union, and by law attempt to change her relations to the General Government, would that not present a case for judicial action under the Constitution and the judiciary act? Pages could be covered with citation of cases before this Court involving questions of analogous character, and they have been so numerous it is useless to name them. If there is any one question above another that this Court should determine, this is that question.

The Government of the United States are bound by acts of recognition already!

When Congress met here in July, 1861, under the call of the President, he sent in his message, in which he stated the war was waged, not for conquest or subjugation, but to maintain the supremacy of the law and the integrity of the Union.

In a few days after that, Mr. Crittenden introduced in the House of Representatives a resolution declaring it to be the duty of Congress to prosecute the war, but for the purpose of preserving the Union as it was, and not for conquest or subjugation; and this resolution passed with only two votes against it; and the Senate endorsed it unanimously, and this was published to the world as the true and honest expression of opinion held by Congress.

Up to and after that time all the legislation of Congress was upon the recognition of the fact that the States in which the revolt had been made were, notwithstanding, States in the Union; and that the war waged against them by the United States was not for any purpose of conquest or subjugation, but to defend and maintain the supremacy of the Constitution and to preserve the Union, with all the dignity, equality, and rights of the several States unimpaired,

and as soon as those ends were accomplished the war was to cease.

While the rebellion was raging, Congress passed acts to apportion representation among all the States by name, including those in revolt; to lay a direct tax upon each of the States, naming each one that was in rebellion as a State, and by its name; to admit West Virginia into the Union as a State, reciting:

"That the Legislature of Virginia, by an act passed on the 13th day of May, 1862, did give its consent to the formation of a new State within the jurisdiction of the State of Virginia, to be known by the name of West Virginia."

By the act establishing the Freedmen's Bureau, passed after the rebellion had been suppressed, the States engaged in it were divided into districts, and put under its authority; and the "civil rights" bill, passed by Congress 9th April, 1866, expressly authorized any person sued in a State court for an act done under the Freedmen's Bureau law, to remove the case from the State court into the circuit or district courts of the United States for the State in which such suit may have been instituted; and also gave to the United States district courts in those States, exclusively of the courts of the several States, cognizance of all crimes and offenses committed against the provisions of this act.

Congress passed an act reorganizing the circuit courts of the United States, in which it embraced by name all the States which had been engaged in the recent rebellion; and in different sessions Congress passed two distinct propositions to amend the constitution of the United States, and submitted them to all the States; and in the second one referred specially to those that had been in the rebellion.

When Tennessee passed her ordinance of secession she was represented in both Houses of Congress, and one of her Senators, Andrew Johnson, remained in his seat until he was appointed by President Lincoln Provisional Governor of Tennessee. Maynard and Clemens were elected Representatives from that State after it had seceded, and were permitted to take their seats. There was no objection then that Tennes-

see had ceased to be a State in the Union, and was therefore not entitled to be represented in the House and the Senate. On the contrary, this Senator and those Representatives of Tennessee received the welcome of every Republican and of every true friend of the Union and the Constitution. The Senator, particularly, for his immovable firmness in holding to his position of Senator from Tennessee, unawed by threats, unseduced by promises, became the civil hero of the Republicans, and their admiration and gratitude impelled them to nominate and elect him to the Vice Presidency, from which, by the act of Providence and the operation of the Constitution, he was transferred to the Presidency; and now the leaders of the party that gave him this great promotion say that he was not constitutionally eligible to either office.

After Virginia had seceded, less than one third of her counties and her people elected a Governor and a Legislature, who were inducted into office, and this Legislature proceeded to elect two Senators to Congress from that State. Messrs. Willey and Carlile presented themselves at the bar of the Senate in the extra session of July, 1861, with commissions as Senators from the State of Virginia, signed by the now Governor Peirpoint, and a motion was made that they be permitted to take their seats. Objection was made by Senator Bayard, on the grounds that they were not elected by the legitimate Legislature, nor commissioned by the legal Governor of Virginia. Those objections were overruled, and Messrs. Willey and Carlile admitted as Senators from the State of Virginia, every Republican present voting in the affirmative. Then there was no thought that Virginia was not entitled to have Senators because she had seceded and rebelled, and was not a State in the Union; or if there was such a thought no person gave it a voice.

At the ensuing session of Congress, December, 1861, Messrs. Willey and Carlile appeared and resumed their seats as Senators from the State of Virginia without any question, and Upton, Blair, Segar, Brown, and Whaley then took their seats in the House as Representatives from the State of Virginia, and not a doubt was uttered as to Virginia being a

State in the Union, and entitled to be represented in the House. Soon afterward West Virginia was admitted into the Union as a State, and Senator Willey, living within and being a citizen of that State, and having been chosen one of its Senators, a senatorial vacancy was thereby created in Virginia. Her government had been continued by Governor Peirpoint remaining in the executive chair, and a portion of the people of about a dozen counties electing some ten members of the Senate and about twenty of the House of Representatives. These gentlemen convened as the Legislature of Virginia, and chose Lemuel J. Bowden to be a Senator from that State as the successor of Senator Willey, and he took his seat without objection.

There is no message, proclamation, or authentic speech or conversation of President Lincoln or President Johnson, in which the question is touched, that does not declare the continued existence of the States in rebellion; and all of them admitted the competency of the people of those States to lay down their arms, to submit themselves to the Constitution and laws of the United States, and they and their States to resume their proper position and relations in the Union; and many of them earnestly importuned that course to be taken.

On the cessation of hostilities in the southern States, President Johnson proceeded to nominate from all over them judges, district attorneys, marshals, postmasters, assessors and collectors of internal revenue, and custom-house officers, in the aggregate amounting to hundreds and thousands, and many of them were confirmed by the Senate without any objection that they were for certain States when there were no such States in existence. The President conceded the great principle, established by both the Constitution and national law, that the power in the rebel States which expelled the Constitution, laws, officers, and authority of the United States from them having been suppressed and no longer forming any obstruction, they all resumed legally their former state, and his duty was to acknowlege and act upon this restored condition of things. This has been called

the President's policy. It has been seen what had been the policy of Congress up to the commencement of its last session. There is no discrepancy between those policies. Each department of the Government, in the performance of its official acts touching the revolted States, maintained these great truths, springing from the whole Constitution, that though the people of one or more States, including those who held possession of their governments and offices, may be in active rebellion against the United States, they are nevertheless *de jure* States in the Union, and on the rebellion being suppressed they resume their former position, and are to be treated by the Government as all the other States, as on proper and friendly relations with it.

Every resolution or bill looking to the contrary doctrine has been pertinaciously and tenaciously rejected by Congress until the passage of this bill of reconstruction. Even recently when, in the Senate, an attempt was made to get an expression of opinion from that body, that it required only three-fourths of the Legislatures of the States represented in Congress to adopt a constitutional amendment, it failed, only seven voting for it.

On 8th February, 1865, Congress passed a joint resolution (No. 12) declaring eleven *States* not entitled to representation in the Electoral College voting for President and Vice President for the one term *only*, beginning 4th March, 1865, and for the reason *alone*, that on the day of the election of President (8th November, 1864) no valid election of electors was held in *those States*. (15 Stat. at Large, 567–8.)

This has been the policy of the judicial department of the Government also. The judges of the Supreme Court proceeded, after the termination of the war, to apportion among themselves the circuits as organized by Congress, including those that have rebelled; to set down for trial both the old and new cases from the States that had been in revolt, and to certify their judgments and orders to the inferior courts in those States; to admit attorneys from them previously practicing at its bar without requiring anew any oaths; to issue writs of *habeas corpus* and orders upon them

running into those States; and as to all matters, making the same application of the laws and the powers and functions of the court and judges to the States and people that entered into the rebellion, as to the other States and their people.

Two of the judges of that Court were citizens of and commissioned from States that were in the rebellion, and the circuit of one was wholly and of the other mostly within those States. According to this new-fangled theory of Congress, those two judges, on the secession and rebellion of their States, became alien enemies to the United States. If so, they then immediately ceased to be judges of the Supreme Court, and could not longer hold their offices; and yet they met and sat and deliberated and pronounced judgments as members of the Court like the other judges, as they had done previously, without any question or doubt ever being suggested.

Did not the Secretary of State, (Mr. Seward,) in all his letters during the war to the ministers abroad, urge upon them the importance of keeping all the time before foreign courts the idea that these States were *still States;* and was not that doctrine firmly and steadily adhered to and maintained by those ministers?

In 1862 Congress assented to the division of Virginia by an act for the admission of West Virginia, and Mr. Bates (late Attorney General) in a letter of August 8th, 1866, tells us that Mr. Lincoln requested each member of his Cabinet to give him his opinion as to the constitutionality and expediency of such act; that each gave the opinion that it was expedient, and "assumed as undisputed doctrine" that, notwithstanding "ordinances of secession or the fact of open rebellion, a *State* continues to all intents to be a State of the Union," and Mr. Bates says these opinions are now on file in the executive department, or should be.

And this Court has provided to hear and determine the cases from those States as before the war, to receive new cases from them, and the docket shows some sixty and more cases from those States have been filed in this Court since the surrender; and some dozen mandates have gone from

this Court to the courts there to be enforced; and as late as the 8th of April, 1867, an allotment was made of the circuits, and those States *as States* were included; for instance, the *State of Arkansas* is a part of Judge Miller's circuit, and the *State of Mississippi* a part of Judge Wayne's &c., &c.

And above all, in the very preamble to the reconstruction bill they are styled and called *States*.

In a treaty between the United States of America and the Choctaw and Chickasaw Indians, proclaimed July 10th, 1866, we find the United States will especially request the STATES of *Arkansas* and *Texas* to grant amnesty as to all offences committed by any member of the Choctaw or Chickasaw nation.

And article 13 of the same treaty, newspapers published in the *States* of *Texas*, *Louisiana*, *Arkansas*, &c., are requested to print the treaty; and in a treaty between the United States and the Cherokee Indians, proclaimed by the President August 11th, 1866, in article 18, certain lands are spoken of as being in the *State* of *Arkansas*, and in article 21 the boundary between the Cherokee country and the *States* of *Arkansas*, &c., is mentioned. This is not merely the action of the *President*, but that of the treaty-making power —the *President* and the great *Senate* of the *United States*, two-thirds of which voted for the bill now sought to be avoided.

With more than a hundred measures of Congress recognizing them as States, and numerous acts of the President himself, and through his agents, and as many almost on the part of this Court, was there ever in the history of any Government such a complete, thorough, and conclusive record made up? If the decision in Luther *vs.* Borden, sup., be good, nearly as often as seventy times seven has the President recognized those States; and if, on the other hand, it be purely a *political* question, of which Congress is the judge, is not Congress estopped by its own action on this subject?

The mere fact that Congress does not admit Senators and Representatives from those States amounts to nothing as to the right of the case. As each House is the judge of the

elections, returns, and qualifications of its own members, this is a question to be disposed of by them, and whether disposed of well or otherwise, there is no help for it. From caprice, whim, passion, or for no reason, Congress might not admit members; but this would not affect the rights of the States, or their status as States. Take Maryland as she now stands. Mr. Thomas is not permitted to take his seat, but she is none the less a State for that reason. And should the other Senator resign, she would still be a State. Or if the two Houses were at once to expel the Senators and Representatives of Ohio, would she thereby cease to be a State? Scarcely.

In the preamble to the reconstruction bill, it is stated that in certain States there are no legal State governments or adequate protection for life or property, and this is directly in the teeth, as we have seen, of all the recognition of this Government. Now, Congress found otherwise before, and which is to hold? When is the finding to cease? To-day Mississippi is a State, to-morrow she is not. This very uncertainty would be almost a convincing reason to show that Congress alone is not the judge of this matter, and that there is a power to prevent the overthrow of rights secured and held under a state of affairs already recognized and acted upon by the Government. If there were room for doubt, this would be a potent reason why this Court had jurisdiction to examine these acts of Congress, and test their validity; otherwise that when this very measure should be enforced, and the States admitted to Congress under it, Congress might expel them, overthrow their governments, and give the so-called States away; rent them out, or sell them. If the power exists it is unlimited, and the idea that one branch of this Government can, by its own acts, in defiance of the others, thus change, unsettle, and overthrow policies, governments, and rights in this wholesale manner, and the judiciary cannot say it is done as it should be, or that it is not, must unquestionably be erroneous and utterly unfounded.

Now, take the case of Arkansas, and in this I speak of

ever crime the individuals in the States of Mississippi or Arkansas may have committed, *those States* committed none against the United States.

Thirdly. The Constitution says, "The United States shall guarantee to every State in this Union a republican form of government." In the form of government mentioned in this measure there is some element of every other form of government but that of republican. It does not even possess the merit of a "deflection from the original forms of government." Every feature of a republican government is omitted, and what is confessed by all to be not only inconsistent with the Government, but directly antagonistic and destructive of it, a military despotism is erected in those States. Instead of preserving a free government to those States, they are reduced to absolute slavery.

Fourthly. The very acts this Court said in Milligan's case Congress could not do are attempted to be done here. Conceding even that in actual war Congress could create these military governments and tribunals and commissions, no one will assert that in peace it can be done, and the clear and precise language of Chief Justice Chase on this point in Milligan's case is enough: "we by no means assert that Congress can establish and apply the laws of war where no war has been declared, or exists. Where peace exists the laws of peace must prevail." In truth that a state of war or of invasion exists is a fact of which the President is the judge, and it does not belong to Congress. (Martin *vs.* Mott, 12 Wheat., 19; and Prize cases, 2 Black, 668.)

Fifthly. The measure in fact attempts to take charge of and control the right of suffrage in those States, which has never yet been claimed to be a matter within the reach of Congress. It is a question for the States themselves to dispose of, and one of those as to which the States are as sovereign and supreme as the General Government is as to any matter of foreign commerce; and being so Congress can not touch this subject. (6 Wheat., 379; 11 Peters, 103.)

Sixthly. The measure deprives those States of Representatives and Senators in Congress, directly in defiance of the

Constitution, which says, "each State shall have at least one Representative," and "no State, without its consent, shall be deprived of its equal suffrage in the Senate," and this is done not merely for the present, but as far as any assurance is given, it may be for all time to come.

Seventhly. Congress, by this act, absolutely expels certain *recognized* States from the Union, and does by another mode what the friends of the late movement in the South advocated, and labored to accomplish, but failed. The many thousands who fell under their country's flag, to rise no more, to prevent a dismemberment of the Union, died in vain, if Congress can now do what their blood and lives were forfeited to prevent. Indeed Congress is "mighty and must prevail," if this can be done.

Eighthly. The whole Government, in its theory and its practice provided for those States is one of force and coercion, which, so far from being acknowledged or permitted under our Constitution, is repugnant to it, and repulsive to the whole idea upon which it is based; and while this act uproots constitutions, and with them the liberties of the people, it puts governments over them about which they have no choice or option, no voice and no agency whatever, and takes from them the free control of their internal matters, with which no one ever yet insisted the General Government could in any manner interfere. This has never yet been done even as to sections held confessedly and openly as Territories, and it is a blow, if followed up, under which those States must sink into chaos and ruin.

Ninthly. The attempt in this measure to brand thousands of persons, and to deprive them of certain rights and privileges before secured to them, without being indicted, notified, and an opportunity to be heard and convicted, is a flagrant violation of every principle of law, as declared by this Court recently in Cummings *Ex parte*, and in Garland *Ex parte*.

The above propositions as to the constitutionality of this law are submitted, without lengthy argument or citation of authorities to support them, for they are self-evident,

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and it were an insult to the Court to quote authorities to sustain them. A calm reasoning of the measure itself is the best argument to support them, and is all they need to be established.

Now, then, the State of Mississippi, for herself and in behalf of other States, comes and shows her *status* in the Union by compacts and ordinances, permanent and indissoluble—as much beyond the reach of Congress as the Constitution is, *or should be;* and shows that the late act of Congress, in attempting to cast her down, is illegal and void; and driven in her last extremity to save herself from disease, prostration, and death, seeks shelter in this Court, and begs the Court to extend its hands to her and rescue her from the certain annihilation that is threatening her. The facts stated are matters of public history, of which this Court will take judicial recognition, and no answer is needed; they are all of record to speak for themselves. She believes she does not appeal in vain to this Court to prevent the opening of this Pandora's box of evils upon her and her sister States; and should this Court, as it has the right to do, stay this tide of destruction, the country will have cause again to rejoice, as it has had so often before, that "*we have judges sitting*" in Washington.

Very respectfully,

A. H. GARLAND,

Associate Counsel for Complainant.

APRIL 10, 1867.